THE NATURE AND SOURCES OF INTERNATIONAL LAW

By Gordon E. Sherman

Lately Assistant Professor of Comparative and International Law, Yale University

Not the least among the many problems of reconstruction facing civilization at the present moment is the establishment upon a secure basis of the principles of international law as a system of world conduct and protection. Of actually restraining principles, indeed, the late war has exhibited few; nor have these, so far as successfully asserted, prevented violations of neutral rights upon a vast scale, together with a similar disregard of privileges heretofore universally conceded to occupied territory; while still more appalling has been the exploitation of diplomatic immunity in the interest of treacherous propaganda, and the wholesale assassination of noncombatants on the high seas. To such action, the words in which Germanicus is represented by Tacitus as addressing his licentious soldiery may well be applied: "Ye have violated even rights accorded to enemies, as also the sanctity of embassy and the consecrated obligations of usage between peoples."[1]

Does a system of justice in international action, then, really exist? And has it enforceable sanctions? Again, though such existence be conceded, does the system not assert claims too lofty for successful maintenance against those not willing to recognize them? Or do the traits shown in the origin and development of this system warrant confidence in its future as a working-force once the world shall have regained a semblance of moral and political order? Difficult as such questions may be to answer at the moment, they must, nevertheless, be fairly met by all who would see international relations placed upon a basis assured both in fact and in law. The aim of the present article will be to ascertain the true origin of modes of juristic thought international in character, as contrasted with a national consciousness confined to its own welfare and conduct and indifferent to the claims of all foreign to its borders.

It would seem to be beyond contestation that the nature of the sources whence conceptions truly international may be found to have been derived will prove our best guide in endeavoring to estimate the claims of international law at the present moment and the hopes of its future usefulness to the world. International law can indeed point to an origin and history

[1] Hostium quoque jus et sacra legationis et fas gentium rupisti. *Annals*, I, 42, 4.

whose features logically demand that the future shall follow the leading of the past; and this is well, for were it the world's task to now initiate a wholly new order of thought and action adequate to control the intercourse of nations, the burden would be heavy, indeed.

Happily, however, such is not the case. For it is not a new creation that is required, but rather the partial reshaping of an existing science in the light of its own imprescriptible standards. The course of history in this field is clear, and not to be mistaken. Nor is the attitude which the subject claims at our hands essentially divergent from that imposed upon himself by Grotius when, as an exile, he undertook, during the desolating conflicts of the Thirty Years' War, to coördinate a system of international regulation fitted not merely for a state of war but as a guide in time of peace as well. "Such a work," says he, "is the more necessary since there are not now, nor have there been found wanting in the past, those who contemn this aspect of law and declare that it exists in name alone, nor is anything more familiar than the opposition of law and arms." Citing many classical passages in illustration of this, Grotius singles out Tertullian as a *Christian* author who but reflects the tendencies of his time. "Tertullian himself would not hesitate to declare deceit, cruelty and injustice to be the appropriate affair of battles." "But," concludes Grotius, "since all discussion of law is of no avail, if there is, in fact, no law, our labors will be at once commended if we briefly repel so grave an error. There is, nevertheless, a common law between nations touching war and its conduct." Nevertheless, Grotius now sees throughout the Christian world a license in war shameful to even barbarous peoples. "The sight of this excess," says he, "has led many men to think that arms should be forbidden to the Christian, although such a course would prove quite as objectionable as would the terrors of combat."

Hence the task is undertaken by him, and he proposes at the outset to distinguish (a) law expressly *instituted* from (b) the law of nature, this latter being ever the same, but the former being necessarily subject to change by human will. Finally, he tells us he intends to appeal touching natural law to the testimonies of philosophers, historians, poets and orators; among philosophers he accords the first place to Aristotle.[2]

Following the paths indicated by Grotius, the inquirer of to-day will turn in the first instance to the classical authors of Greece and Rome. Here law as defined by Aristotle[3] falls into two chief classes: (a) the law of a particular state, that is to say, law ordered or acknowledged by the state and which would comprise statute law and law customary or unwritten; and (b) law general in its application, or the law of the natural order of things. Again, Aristotle divides political justice into natural and legal, the former being the law of nature, the demand of natural

[2] *De Jure Belli ac Pacis*, I, IX, 2, and *Prolegomena*, 3, 4, 5, 28, 29.
[3] Rhetoric, 1, 13, 2.

reason and unalterable, whereas the latter is instituted by man. And he concludes that every *principle* in law and custom stands in the relation of a universal to a particular,—"the things done are many, but the *principle* is singular and *universal.*"[4]

The conception of natural law as the law of the eternal order meets us in Hesiod where it is "the law ordered for men by the son of Kronos";[5] again, it is the law by which immortals and mortals are alike guided,—"the sacred spirit of Justice placed among the stars."[6] It is the Divine Will with which Socrates tells Hippias all earthly regulation must harmonize.[7]

These conceptions evidence a course of thought which, when in time transplanted to Rome through study of the Stoic philosophy, was destined to impress upon the practical Roman mind influences far-reaching in their results. The *universal* element in law becomes combined with a sense of equity in the private relations of life innate in the Roman mind, and also of public faith as witnessed in formal aspects of the initiation, the conduct, or cessation, of hostilities and the negotiation and maintenance of treaties. And there is thus reached a mode of thought from which the concept of a law not merely general and world-wide, but *international,* may be said to have sprung. Such a concept may well be deemed the efficient agent moulding an apprehension of universal world-relationship into an element of political cognition, and at the same time making it the foundation stone of a legal system fitted to exhibit coördinated rules controlling the mutual relations of states. This is Rome's best legacy to the modern world, and attests a beginning of public thought truly international.

To ascertain the sources of a system of legal institutions it becomes essential to grasp not merely the guiding principles whence these institutions may have sprung, but we must also picture the phases or moods shown in successive transformations whose results will thus exhibit an organic group logically evolved from the past. With these ends in view, we proceed to glance briefly at certain characteristics of the law of early Rome.

Law (*jus civile*) is primarily ancient Roman custom crystallized upon the bronze of the XII Tables and whose foundation is *consuetudo* or *mos, i.e.,* the usages of *gentes* whose clan-members form the city-state: *consuetudine autem ius esse putatur id, quod voluntate omnium sine lege vetustas comprobarit.*[8] Supplementing the XII Tables is *lex,* which designates provisions approved by the citizens in assembly (*lex curiata, lex centuriata* later *plebiscita*) on a magistrate's proposal (*rogatio*). None but the *citizen,* however, might claim the law's protection, save under treaty-provisions, although the alien is amenable to the sanctions of *penal* juris-

[4] Ethics, 5, 7, 1, 1134b, 19, and 1135a.
[5] Works and Days, 276.
[6] Orphic Hymn, No. 63, 1.
[7] Xenophon, *Memorabilia,* 4, 4, 19.
[8] Cicero, *De Inventione,* 2, 22.

prudence. The *peregrinus* is an alien friend enjoying protection in virtue of a treaty (*fœdus*), and so within the guardianship of Roman *pax*.[9]

In addition to *consuetudo* and *lex*, there exist as definite law-sources *interpretatio*, that is to say, construction and comment on the part of *jurisprudentes*, and the *edicta* of the magistrate (*prætor, ædile*). For while the ancient code offers a presentation of law apparently immovable, it is nevertheless not in the mind of the people that its law shall maintain absolute rigidity. A code necessarily exhibits law as it is in the present and with possible suggestions of its historical evolution. But law must respond to the changing needs of a people, and in recognition of this principle it is to jurists and magistrates that at Rome the slow remoulding of substantive and procedural law is of necessity chiefly committed, in spite of the competence of the people in assembly to exercise their power of law-making—a power seldom, in fact, at Rome, brought into action. Hence the importance of the jurisconsult's labors accorded him a place scarcely inferior to that of the magistrate, though the latter is invested with *jurisdictio* and *imperium*. Cicero terms the jurisconsult "*totius oraculum civitatis.*"[10]

In the early centuries of Roman history both knowledge and exposition of law is in the hands of the pontifices, and these alone are familiar with the practical rules governing suits. According to the tradition preserved by Livy (IX, 46), Cn. Flavius succeeded in forcibly transferring the records of the city's law from the priestly caste and laying the entire system open to the light of day in order that all might become familiar with it: *civile jus, repositum in penetralibus pontificum, evulgavit fastosque circa forum in albo proposuit, ut, quando lege agi posset, sciretur.* The chief accomplishment of Flavius was in stripping mystery from those forms of action which constituted the most striking and difficult portion of the ancient Roman system, for it was the theory of the ancient law that the magistrate *presided* only at the outset and did not carry to a conclusion the actual proceedings in suits; these latter were supposed to be rigidly bound within prescribed forms (*Legis Actiones*), and if the responsibility attending their employment were relegated to the suitors, these would suffer the

[9] "The treaty of friendship concluded between two city-states (*pax*, from *pango*) provides, in the first place, for a durable peace (*pia et æterna pax*—Cicero, Pro Balbo, 15, 35), and reciprocal recognition of the liberty and property of their citizens . . . and a declaration of the legal equality of the contracting cities. Such a treaty would provide for exchange of ambassadors lodged and paid by the city to whom they were sent. More important, however, in the Roman view, than the city's external relations was the regulation of inter-state rights of citizenship, for the non-citizen had no claim upon Roman law save under treaty. The term *hostis*, later peregrinus, signifies one protected by treaty: *Tum eo verbo dicebant peregrinum qui suis legibus uteretur.*" (Mommsen, *Droit Public Romain*, French translation, VI,[2] 214, 215; *Römisches Staatsrecht*, 3[1], p. 598.) The Romans never knew *international* law (VI. 216. Mommsen).

[10] De Oratore, I, 45.

penalties attaching to ignorance and mistake. Since, then, all accurate knowledge of those indispensable formalities had been jealously maintained as the prerogative of a highly privileged class, the citizens at large remained practically dependent on that class for their knowledge of the procedure to be employed, and it was the abrogation of this dependence upon the pontifical college that enabled Roman law to begin a new development. From the exclusive competence of the pontiffs the knowledge of law and procedure was thus to pass to the jurisprudents and the secular magistrates, and the process was to be marked by the institution of a new procedure known as the formulary system,—*Formulæ.* The essentially revolutionary accomplishment of Flavius, placed by Livy as in A. U. C. 450, *i.e.*, some three centuries before the Christian era, and which had reached the culmination of its effects not long before the age of Cicero, was destined to open a way to the broadening of private law and procedure, and to the recognition of principles deeply significant in the public and external life of Rome.

The Roman theory of legal process required a suit at law to be conducted under two successive aspects, known as *jus* and *judicium;* that is to say, the judicial function was not supposed to lie wholly within the hands of a single magistrate or bench of magistrates, but was divided between two individuals, or groups of individuals,—the *magistratus* and the *judex.* To the magistratus there was assigned the duty of so shaping the cause as to bring it to a point where its actual final determination might be confided to another hand, that is, to the *judex,* who was not a public official, but who was supposed to be advised by jurisprudents, at the same time taking from the magistrate certain instructions as to the nature of the cause and the law to be applied. Under the earlier *régime* such instructions were oral, but in later days they assumed the shape of a formula or written presentation of the case which now passed from the stage *in jure* to that termed *in judicio.* Here there was in effect little more expected than a demand upon the magistrate for a *formula* and the granting or refusal of this on the magistrate's part. A suitor was himself expected to select the formula desired from among those contained on the magistrate's *album,* where was to be found a statement made at the beginning of his annual term of office of such general principles of law and procedure as might be expected to govern his administrations:—*Sunt jura, sunt formulæ de omnibus rebus constituæ expressæ sunt publicæ a prætore formulæ ad quas privata lis accommodatur.*[11] It will be readily perceived that much depended on the magistrate's edict, as well as upon his construction of its provisions as evidenced in such *formulæ* as he might give out. It was, of course, expected that the magistrate would adhere in practice to both the letter and spirit of his edict. That Verres had signally failed in good faith touching these was one of Cicero's most serious accusations. The

[11] Cicero, *Pro Q. Roscio,* 8.

magistrate might be an *ædile* or *prætor;* after B.C. 242, one or more *prætors* were specially appointed *prætores peregrini* for suits between aliens or between citizens and aliens.

In addition to the *judex,* there were also *arbiters* whose hearing and determination of a cause came more properly within the moral than the legal sphere. To the arbiter's award there attached indeed no strictly legal sanction, yet it was scarcely less effective than that of the *judex,* since the stern conception of public faith on the part of early Rome tended to invest fiduciary acts with a sanction strongly supported by public opinion and the neglect of which might open serious consequences through wide powers conferred upon the *Censor.* An adverse finding by this official touching the acts of any citizen brought with it the infliction of *ignominia,* carrying with it possible exclusion from the Senate or from the most valued rights of citizenship. Gradually the functions of the *arbiter* and the *judex* came to be identified or similar in effect, and as the offices of both were supposed to require the aid of counsellors learned in the law, the sentences given would tend to be based on broadening principles of equity rather of slavish adherence to the letter of the law, both on the part of the magistrate, the *judex,* the arbiter, or the *recuperatores,* these latter forming a species of arbitral body for the decision chiefly of suits where aliens might be concerned under treaty provisions. Pliny tells us that he has often so acted: *frequenter egi, frequenter judicavi, frequenter in consilio fui.*[12]

On the part of the suitor, assistance was to be obtained from retained jurists, while, when the cause reached the *judex* or *arbiter,* it was possible to employ an *orator,* who was regarded as the patron (*patronus*) of his client (*cliens*), and it was also possible to call in the assistance of outside parties (*advocati*) were the cause of sufficient moment to warrant this. Proceedings were of the most public character; the magistrate sat in his *tribunal* in the Forum with his *consilium* and *scribæ* about him; the *judex* also sat in public with his *consilium,* and thus the Romans might readily become familiar with every changing phase of legal thought.

The theory of the edicts and of the formulary system presupposed that the magistrate would hold fast to applications of recognized *jus civile* as modified by its *interpretatio* at the hands of the jurists, and to such principles of customary law as were admitted an integral part of Roman jurisprudence. There existed here, plainly, a lawful opportunity for the magistrate's judgment to be guided by progressive as opposed to reactionary tendencies, and it was possible for him, aided by enlightened advice from his *consilium,* to indicate courses of action which, in the hands of the orator, might well invoke more theory than actual law,—more of the ideal than the practical. In the end there was forged a liberally-developed body of principles exhibiting a jurisprudence owing little to actual legislation, but the product of judicial, conciliary or oratorical effort, and into which

[12] Epistolæ, I. 20.

there manifestly entered much that was of a lay rather than professional origin. It was, in truth, but an expansion of labors carried on through the early centuries in the *interpretatio* of the jurists as already noted. Many of the magistrates were themselves jurisconsults of great eminence and strengthened, moreover, by the counsel of learned *prudentes* whose influence would constantly work toward innovation and application of equitable counsels; the magistrate's *Album* would be likewise indebted for both its letter and spirit to similar advice. Thus arose a new jurisprudence,—the *jus prætorium*. So Papinian tells us in Justinian's *Digest* (I, 1, 7, 1): *jus autem civile est, quod ex legibus, plebiscitis, senatusconsultis, decretis Principum autoritate Prudentium venit.* § 1. *Jus prætorium est, quod Prætores introduxerunt, adjuvandi, vel supplendi, vel corrigendi juris civilis gratia, propter utilitatem publicam: quod & honorarium dicitur, ad honorem Prætorum sic nominatum.* And Marcian adds: *Nam et ipsum jus honorarium viva vox est juris civilis.* As time went on, the prætorian edict became, so to speak, standardized, that is to say, it assumed the form of a permanent annual announcement,—*edictum perpetuum*,—and the system begotten by it took equal rank with *jus civile*, constituting a source of law which, though later, was yet not actually inferior to the XII Tables. These edicts were not engraved upon bronze, but upon bleached wooden tablets and in black lettering, or, possibly, on papyrus or even on less permanent material. The edicts, both of *prætors* and *ædiles*, were placed in the Forum where they might be read of all: *apud forum palam, ubi de plano recte legi possitur.*

While we know little touching precise provisions of the edicts issued by the *prætores peregrini*, we may well suppose that these would contain provisions more or less influenced by the knowledge of foreign law and custom inevitably to be gathered from suits where foreigners were parties. It is certain that steps in the process of widening the ancient *jus civile* were taken by the city *prætor* at a very early period in Roman history, and in suits exclusively between citizens at the first [13] and from thence tending to include, as commerce and civilization advanced, principles of broadened aim gradually developed in the daily and simple affairs of commercial life: *angustissimis finibus constitutum per legem duodecim tabularum jus præcipiendarum hereditatum prætor ex bono et æquo dilatavit.*[14]

When Cicero, closely studying Stoic philosophy and Grecian ideals, began the composition of his treatises on morals, philosophy, and law, the

[13] It is important to bear in mind that the broadening of Roman legal thought along practical equitable lines proceeded in the first instance from within outward; there is no evidence whatever that the prætor first found equitable conceptions through comparison of alien usages brought before him by *peregrini*, and thus *evolved a jus gentium* on world-law as stated in practically all of our standard works on international jurisprudence. Such a course is in conflict with the genius of Roman legal development.

[14] Institutes, III, 9, 2.

conception of a *jus naturale* had doubtless already become familiar to the scholarly class at Rome. It is nevertheless to Cicero that we are chiefly indebted for a knowledge of this conception as grasped by his fellow-students and eloquently expounded by himself both in the contests of legal practice and in the seclusion of literary effort. He not merely explored the philosophic aspects of morals and jurisprudence, but laid down definitions strictly practical in their application. Excellent examples of such are found in his little essay on *Topics*. Cicero had, indeed, clearly visualized the Stoic grasp of life in the light of a law eternal and universal and applicable to every phase of human activity.[15]

In Cicero's mind, and doubtless in the minds of many of his fellow-countrymen, it was manifestly difficult to draw accurate distinctions between the provinces of what was already clearly understood as equity or fair dealing in daily life and that of a law announcing principles of inflexible right valid everywhere. It is probably true that long before this period the system of which we have spoken had developed in suits between citizens, and citizens and aliens touching fair dealing, and had received a title (*jus gentium*) itself borrowed from the name given to early clan-law (the law of the *gentes* whose members formed the ancient patrician commonwealth of Rome), but now applied, since equitable principles were found through increasing foreign intercourse to be common to many people, as well as to the Romans, to the newly developed system of *prætorian* law. That this was akin to the law of nature in many of its aspects would be readily understood. Hence in Justinian's *Digest* Pomponius (*Digest*, 1, 2, 2) groups the principles of duty to the gods, obedience to parents and loyalty to the Roman city-state as a *primary jus gentium;* a *jus gentium secondarium* being found in those aspects of world law answering to more distinctively human needs. And since *jus gentium primævum* is unquestionably a child of *jus naturale,* it may be said to have formed an easily discerned pathway from *jus naturale,*—a system wholly ideal,—to *jus gentium* intended as a system of practical application, though now perceived to be in certain root-conceptions world-wide and so a part of law universal. *Jus gentium* is then a law, or a system of law, common to all nations, and presenting the forms of a jurisprudence notably adapted to the daily life of man. It is, however, a national law guiding peoples viewed chiefly in their internal affairs. Reciprocity was far from being consonant to the genius of Rome. Nevertheless, the vision of a law *between nations* and governing their reciprocal actions is perhaps now fairly above the horizon, though as yet a long way off: we shall find it ultimately reached in the course of advancing civilization and the upspringing of humanitarian con-

[15] *Atque hoc multo magis efficit ipsa naturæ ratio, quæ est lex divina et humana: cui parere qui velit (omnes autem parebunt qui secundum naturam volent vivere) nunquam committet ut alienum appetat, et id, quod alteri detraxerit, sibi adsumat* (Cicero, *De Officiis*, III, V, 7).

ceptions compelling recognition by nations of responsibility to the moral reprobation of universal standards.

Thus *jus gentium* originating as law *prætorian* (in gradual modification and broadening of *jus civile*) and gathering to itself many kindred features from subsequently ascertained customs of peoples coming into contact with Rome, became fitted to be a determining element of world law. Into its content there had entered (together with conceptions of intrinsic right) the lofty idealism of Greek poets and philosophers, the social theory of the Stoic who proclaimed an essential solidarity and necessary interdependence of mankind, and the idea of human brotherhood which so signally characterized early Christian teaching. Fragments of the literature illustrating these various phases of juristic thought were preserved and transmitted to modern times through many channels, theological as well as juridical. It is, however, chiefly to the *Digest* of Justinian (A.D. 533), the *Etymologies*[16] of Isidore (circa A.D. 622), the *Decretum* of Gratian (circa A.D. 1140), and the *Summa Theologiæ* of St. Thomas Aquinas (a little over a century later) that we owe the texts which were to serve theological writers in the Age of the Renaissance in their endeavors to apply principles of law universal to the formation of a law which should, in the first instance, regulate or diminish the horrors of warfare, and furthermore constitute a living rule between peoples in time of peace. For the ends in view it is readily seen, bearing in mind the temper of the times, that the task would naturally fall to expositors of theology and morals. It was assuredly well said by St. Augustine: "He who would lay down temporal laws, will wisely consult the law eternal, that he may discern amid its immutable rules what should be commanded and what forbidden." [17]

The passage in the *Epitomæ* of Hermogenian preserved in Justinian's *Digest* (1, 1, 5), and which undertakes to summarize the various aspects of *jus gentium*, tells us that by this law wars are brought on, peoples are separated, kingdoms founded, property recognized, boundaries set up and buildings erected, trade, buying, selling, leasing, and obligation in general created: *Ex hoc jure gentium introducta bella; discretæ gentes; regna condita; dominia distincta; agris termini positi; ædificia, locationes, conductiones, obligationes instituta; exceptis quibusdam quæ a jure civili introductæ sunt.* This enumeration, with slight variations, is repeated by Isidore in Book V, chapter VI, of the *Origines*, by St. Thomas in his *Summa Theologica* (Q. XCV, a, 4), and by Gratian in the *Decretum* (1, 1, IX).

It is plain that there is here much confusion of thought, and that what was intended to be described under the term *jus gentium* is the aggregate of such aspects of individual or national action as may properly be brought under general legal regulation. But in the reasoning which came to be employed by those writers of the fourteenth and later centuries, who laid a foundation adequate to the development of modern international thought,

[16] *Originum sive Etymologiarum Libri XX.* [17] *De Vera Religione*, circa A.D. 400.

it was evident that if wars were to be softened or prevented,—and this, it is to be remembered, was their primary aim,—it would be necessary to invoke considerations drawn from the moral nature of man, and the inescapable identity of his interests with those of his fellows. Hence it is that Franciscus de Victoria in his *Relectiones de Indis,* written early in the sixteenth century, appeals (p. 390) to the testimony of Florentinus in the *Digest* (1, 1, 3) who, referring to the *jus gentium secondarium,* reminds us that nature has formed a bond of relationship not to be broken by injury on the part of a man toward his fellows. Florentinus was a member of the Council of Alexander Severus and wrote early in the third century A.D. He was esteemed as one of the most accomplished men of his time, and in this fragment, as preserved by Justinian, we discern an accurate reflection of the Stoic principle of *Societas.*[18]

It is this principle, indeed, applied by the theologians of that day to world affairs which alone could support any structure of international scope. Thus it was that toward the close of the sixteenth century, Suarez, one of the greatest of all the immediate predecessors of Grotius, considers *jus gentium* as a system intermediate between *jus naturæ* and *jus civile.* The four concluding chapters of the second book of his treatise *De Legibus* are devoted to *jus gentium,* and here he strongly emphasizes the conception of an international community world-wide in its range. But while thus rightly conceiving such association as the indispensable condition of human progress from a purely practical point of view, Suarez does not neglect a far higher standard and founds himself on principles identical with those enjoined, as we have seen, by St. Augustine: *Dicitur ergo humana lex quia proxime ab hominibus inventa et posita est. Dico autem proxime quia primordialiter omnis lex humana derivatur aliquo modo a lege eterna.*

Here, admitting the final authority of the law of nature, Suarez and his successors applied themselves to the construction of an international system in harmony with the deeper things of morals and religion. National action must become coördinated, on the one hand, in obedience to a divine rule, and on the other, it must recognize the need of self-protection and intercourse as the visible sources of a truly international law.[19] In the view of these great writers, the idea of abstract justice is objectified in the creation of the world order whose units are nations and in which the

[18] *Natosque esse ad congregationem hominum et ad societatem communitatemque generis humani,* etc. (Cicero, *De Finibus,* IV, 2, 4).

Sed omnium, quæ in hominum doctorum disputatione versantur, nihil est profecto præstabilius quam plane intellegi nos ad justitiam esse natos neque opinione sed natura constitutum esse jus.

Id jam patebit, si hominum inter ipsos societatem conjunctionemque perspexeris (Cicero, *De Legibus,* I, X, 28).

[19] It is important clearly to distinguish the *sources* from the *evidences* of international law. Dr. Woolsey, in his *International Law,* 4th Ed., pp. 21 and 22, note, says: "Self-protection and intercourse are the two sources of international law. They

individual and particular yield to the permanent and universal. The essential unity of mankind, first grasped in the moral sphere only, thus reaches the positive character of a legal order. The member states of such a world community may not, therefore, assert any right of action incompatible, either in war or peace, with these high standards.

Rightly understood in the light of its origin and history, international law makes an unassailable claim to the loyalty of every friend of civilization. Taking its rise in a recognition of eternal truth and of the undeniable needs of national communities, its source-conceptions are drawn from a realization of primal conditions under which alone civilization may hope to persist and develop. In its essential nature it is seen as a silent yet vivifying element in the associational harmony and progress of the human race, and its appeal is to the permanent and ennobling in individual as in national character and achievement. It may well demand, therefore, a zealous interest in every effort looking to a sympathetic interpretation and a knowledge of its ideals. To assure its expansion and enforce its

make it necessary, and the conception in man of justice, of rights and obligations, must follow because he has a moral nature."

In the leading case of Hilton *v.* Guyot, decided by the United States Supreme Court at October term, 1894 (159 U. S. 112, 163), the court said:

> "International law, in its widest and most comprehensive sense—including not only questions of right between nations, governed by what has been appropriately called the law of nations; but also questions arising under what is usually called private international law, or the conflict of laws, and concerning rights of persons within the property and dominion of one nation, by reason of acts private or public, done within the dominions of another nation—is part of our law, and must be ascertained and administered by the courts of justice as often as such questions are presented in litigation between man and man duly submitted to their determination.
>
> "The most certain guide no doubt for the decision of such questions is a treaty or statute of this country. But when, as is the case here, there is no written law upon the subject, the duty still rests upon the judicial tribunals of ascertaining and declaring what the law is whenever it becomes necessary to do so in order to determine the rights of parties to suits regularly brought before them. In doing this, the courts must obtain such aid as they can from judicial decision, from the works of jurists and commentators, and from the acts and usages of civilized nations."

At the Conference of Teachers of International Law, held in Washington, April 23-25, 1914, under the auspices of the American Society of International Law, the following resolutions, reported by a subcommittee, of which the present writer had the honor to be chairman, were unanimously adopted by the Conference:

> (1) "In the teaching of international law emphasis should be laid upon the positive nature of the subject and the definiteness of the rules."
>
> (2) "In order to emphasize the positive character of international law, the widest possible use should be made of cases and concrete facts in international experience."
>
> (3) "In the teaching of international law care should be exercised to distinguish the accepted rules of international law from questions of international policy."
>
> (4) "In a general course of international law the experience of no one country should be allowed to assume a consequence out of proportion to the strictly international principles it may illustrate.
>
> "The interest of students can best be aroused when they are convinced that they are dealing with the concrete facts of international experience. The marshalling

prescriptions should be the aim of all who would seek part in a world inheritance at once the support and the promise of enlightened happiness for mankind.

of such facts in such a way as to illustrate general principles lends a dignity to the subject which cannot help but have a stimulating influence.

"Hence international law instruction should be constantly illustrated from those sources which are recognized as ultimate authority, such as—

(a) Cases, both of judicial and arbitral determination;
(b) Treaties, protocols, acts and declarations of epoch-making congresses. (Westphalia, 1648; Vienna, 1815-23; Paris, 1856; London, 1909.)
(c) Diplomatic incidents ranking as precedents for action of international character;
(d) The great classics of international law."

In the case of the *Zamora*, decided by the Judicial Committee of the Privy Council, April 7, 1916 (2 A.C., p. 77), it was objected on the part of appellants that the provisions of Order in Council No. XXIX material to the present question violated the law of nations, and that the prize court should not act upon them. The court held that the Crown has no power by Order in Council, but prescribed an order to alter the law which the prize courts have to administer, even where that law is imperfectly ascertained and defined; but when an Order in Council mitigates the rights of the Crown in favor of enemies or neutrals, it is the duty of the prize court to act upon it.

The part taken by courts of justice in the development of international law is comprehensively considered by the Hon. Simeon E. Baldwin, in the *American Law Review* for March-April, 1901; and the "Legal Nature of International Law" forms the subject of an exhaustive article by Dr. James Brown Scott in the AMERICAN JOURNAL OF INTERNATIONAL LAW for October, 1907.

"The Sources of International Law" forms the subject of a brief article by Sir Frederick Pollock in the *Law Quarterly Review* for October, 1902, p. 418; this article being subsequently expanded by the author in Vol. XII of the Cambridge Modern History.

INTERNATIONAL SOCIETY AND INTERNATIONAL LAW

By Jesse S. Reeves

Professor of Political Science, University of Michigan

In a recent work entitled *The Psychology of Nations*[1] we are told that "International Law must be made intelligible to very young minds, and now that we are to have an international seat of congresses and courts, the interest must be made in its existence to give reality to the idea of internationalism." This admonition by a psychologist is illustrative of a widespread attitude toward international law; that it is a matter readily understood, for which there need be no specialized training, everyone being competent to pass judgment upon any subject about which international law is supposed to be concerned.

At the opposite extreme are certain specialists in the subject of international law, one of whom has recently stated that it is no more possible to make the principles of international law intelligible to the untrained mind than to popularize for infants the binomial theorem, or the laws of optics, or the rule against perpetuities.[2] We have from a combination of these examples the strange paradoxical phenomenon not infrequently observable: some of us are apt to regard matters outside of our own fields of specialization as easy to be understood, and have no difficulty in making generalizations with reference to them by which a specialist would not dare to hazard his reputation; and yet at the same time we are apt to consider our own fields as caviare to the general, even to the extent of assuming that one's own particular body of knowledge is esoteric. International law is, on the one hand, not a matter for the instruction of infants, nor, upon the other, should it be treated as an esoteric subject, for it has to do with the actualities of life.

That there has been since the outbreak of the World War a feeling on the part of many writers that there should be some restatement of the fundamental principles of international law in terms of international life, is apparent from many titles in the recent literature of the subject. "The New International Law," "The Renovation of International Law," "The Future of International Law,"—such are a few of these titles, showing the drift of thought. Hardly had the invasion of Belgium taken place in 1914 before a leading German scholar set forth an essay entitled "The New International Law," in which he insisted that it was necessary to rebuild that body of thought according to the methods of German science, "for

[1] By George E. Partridge, 192.

[2] R. R. Foulke, *International Law*, preface.

German science alone has been able to work in systematic fashion''; and looking into the future, he hoped that Germany would be so ''vastly fortified by her victorious war that she could undertake the protection of international law just as, centuries ago, the Lombard, Dante, invoked the German Emperor as the protector of law and the shield of justice.''[3]

Others have insisted that international law has departed from its original foundations, that it is necessary to eliminate the influence of certain eighteenth century writers, especially Vattel, and, paraphrasing a familiar maxim, cry ''Back to Grotius.''[4] Still others have felt that international law has developed too much along the positive side, and thereby has eliminated too much of its original ethical content. Still others again argue that international law is weak because vague, and vague because of its lack of complete expression in a codified form. Again, there are those who object that, to the extent that there has been a process akin to codification, those conventions and treaties that have been regarded as law-making were but unwholesome compromises and have therefore retarded rather than advanced the progress of legal ideas as applied to international society.

And, finally, there are those (perhaps they are the greatest in number) whose insistence is that international law has been weak because of the lack of force behind it, by which the vindication of its rights can be enforced and the performance of its duties compelled. In other words, the insistence is that international law must acquire a satisfactory sanction. And finally much of the argument in favor of international organization rests upon the assumed need for the codification of international law,—an international legislative process and the machinery for its enforcement, not only judicial but executive, a need which fifty years ago James Lorimer set forth as the ultimate problem of international jurisprudence.[5]

Before considering the character of the new international law, it is obviously desirable to weigh the objections to the old, the fundamental principles having to do with the essential qualities of international rights and duties. If we go back to Grotius, we shall see, as has been so frequently recognized, that his system is based upon two juristic concepts: one, that of the law of nature; the other, that of custom and precedent evolving general rules (*jus gentium*). The former conception had been developed from the Greek Stoics and the Roman civilians through the Middle Ages, so that Grotius, while adopting the law of nature as a source of international law, was using an idea familiar to all who had been thinking in legal terms. The law of nature furnished an idealistic and ethical content which could be put in strong contrast with the unethical and violent attitude of state toward state. No one was free from the obligations of the law of nature, discoverable by man through the exercise of right

[3] Kohler, *Das neue Völkerrecht, Zeitschrift für Völkerrecht*, Sept., 1915.

[4] C. von Vollenhoven, *The Three Stages in the Evolution of the Law of Nations*, 1917.

[5] Lorimer, *Institutes of the Law of Nations*, Book V.

reason. Bodin had set forth the doctrine of absolute sovereignty, the Roman conception of *imperium* applied to a sixteenth century territorial state. The territorial state coming to be the type of European political organization, the doctrine of Bodin had application to other kingdoms and commonwealths than that of France, which he had particularly in mind in propounding the theory. It is true that the theory of sovereignty which Grotius developed differs in some degree from Bodin's. Back of Bodin was the French monarchy; back of Grotius was Dutch federalism and a distinct body of constitutional principles. But Grotius's theory of sovereignty is not essential to his conception of international law. The point is that, whatever the doctrine of sovereignty, whatever the nature of states, each was subject to the universal, immutable principles of the law of nature.

Not as antagonistic to this, but rather as complementary to it, was the other factor in Grotius's theory, one equally familiar to civilians and jurists, the idea of a body of rights and duties growing out of universal practice, custom, and precedent. With Grotius the two factors, *jus naturæ et jus gentium*, form an integrated whole. This phrase comes later to connote international law in the modern sense.[6] It remained for his successors to separate the law of nature from the positive law of nations and frequently to exalt the former to the exclusion of the latter. Thus Pufendorf practically eliminates the binding force, as between nations, of custom and precedent. He erects the law of nature into a general scheme of legal philosophy, or of justice, dominating the relations of external action, both of individuals and of states.

On the other hand, beginning practically with Leibnitz (fitting thus into a philosophy of experience), the legal relationships of states are founded upon what were conceived to be the actualities of international life as these were evidenced in treaties and conventions. The great difficulty with the law of nature, as set forth by Pufendorf and his successors, was that, being a body of universal, immutable principles, it was in a way at once idealistic and self-limited. The rights of states, according to the law of nature, were essential attributes or categories of states. They were qualitative factors entering into the very nature of states themselves. The conception of duties was limited largely to the recognition merely of rights which the law of nature posits to states as their essential attributes. Thus, under a theory of the law of nature, states become as individuals in the so-called state of nature, each having absolute or natural rights, as against the others, which under the law of nature they were bound to recognize, but which could only be vindicated under a system of self-help, for in such a state of nature, as Locke showed, each was the sole executor of the law of nature and the sole maintainer of rights.

[6] *Cf.* Shakespeare's amazing anticipation of this phrase: "By gift of heaven, by law of nature and of nations," Henry V, II, 4, line 80, "These moral laws of nature, and of nations speak aloud," Troilus and Cressida, II, 2, line 184.

From this conception of the legal attributes, or qualities, of states, proceeded the doctrines of state equality and of the other fundamental rights of states. Aside from all of the historical and philosophical difficulties in such a conception of law as is embodied in the theory of the law of nature, it is apparent that such a theory does not take account of the factors of change in international life, some of which we associate with the idea of progress. Indeed, the theory of the law of nature, as it was accepted in the seventeenth and eighteenth centuries, preceded all theories of national progress. Montesquieu, who faintly suggests such an idea, was not in sympathy with the prevalent system of the law of nature. But his ideas and those of the other eighteenth century writers were radically different from the later conceptions of national progress developed under the influence of the theory of biological evolution.[7] The theory of the law of nature is not only opposed to progress, but it is antagonistic to all plans for international organization which go farther than the binding of states by means of formal agreements. To paraphrase a remark of Professor Frankfurter, international relations were conceived to be not a way of ordering life, but jural categories encysted in phrases applicable *semper ubique et omnibus.*[8]

It was therefore a normal development in juristic thought which Wolf set forth. Dissatisfied with the inelastic and logically anti-social character of the law of nature as set forth by Pufendorf, but not wholly rejecting that system, he developed a conception of international organization, a *civitas maxima,* which is, if pushed to its logical conclusion, a negation of some of the vital elements of a law of nations.

The two currents flowing from Grotius are in a sense united in the writings of Vattel, who sought to retain the ethical content without relinquishing the firm foundation of positive custom and precedent. Wolf had spoken of the *civitas maxima* as the great commonwealth of nations having a necessary and natural basis upon which are built the rights and duties of the members to each other. Vattel proceeds from the idea of society, not in the sense of a *civitas* (a juristic entity) but as the society established by nature between all mankind. He said:

> The universal society of the human race, being an institution of nature herself, . . . all men are bound to cultivate it and to discharge its duties. . . . And since nations, considered as so many free persons living together in a state of nature, are bound to cultivate the human society of each other, the object of the great society, established by nature between all nations, is also the interchange of mutual assistance for their own improvement and that of their condition.[9]

[7] Bury, *The Idea of Progress, passim.* [8] *New Republic,* April 13, 1921.

[9] Vattel, *Prelim.,* Sec. 11. Von Vollenhoven's indictment of Vattel is logically a denunciation of neutrality, and a reversion to the conception of just and unjust wars, elaborated by Grotius. *Op. cit.*

This idea of society, the Great Society, set forth here by Vattel, had been largely anticipated by the judicious Hooker, who, writing about 1592, some thirty odd years before the appearance of Grotius's great work, thus described the law of nations:

> Now, besides that Law which simply concerneth men, as men, and that which belongeth unto them as they are linked with others in some sort of Politique Society, there is a third kinde of Law which toucheth all such several bodies Politique, so far forth as one of them hath publique commerce with another. And this third is the Law of Nations. . . . The strength and vertue of that law is such, that no particular nation can lawfully prejudice the same by any their several laws and ordinances, more than a man by his private resolutions the law of the whole Commonwealth or State wherein he liveth. For as civil law, being the act of the whole body Politique, doth therefore over-rule each several part of the same body; so there is no reason that any one Commonwealth of itself should, to the prejudice of another, annihilate that whereupon the whole world hath agreed.[10]

The interesting thing about this excerpt from Hooker is that, in the first place, he has a modern conception of international law as a law of a great society, and, secondly, he affords a conception resting upon the recognition of legal duties. One regrets that the logical mind of this learned man did not further interest itself in the subject of the law of nations, so that we might have had, not only as a part of legal literature, but as one of the classics of Elizabethan English, a statement of fundamental principles of the law of nations.

Practically coincident with the downfall of Napoleon and the reconstruction of Europe, there is what amounts to a demolition of the old doctrine of the law of nature following the examination of law in the light of the philosophy of Kant. To what extent Kant's philosophy of law contributed to the idea that international relationships, expressed in terms of law by treaty, could be determined by a small group of sovereigns, is a subject which might well be investigated. It can be no mere coincidence that after the appearance of Kant's study on the nature of law, the seventeenth and eighteenth century doctrines of the law of nature tended to disappear. The idea of will expressed in the norm of law as a command, and the conscious selection of alternatives through will, left no place for the old immutable, universal principles of the law of nature.[11] At the same time there was afforded a juristic basis for the statement of the principles of international law in conventional form by international agreement. Kant's *Essay upon Everlasting Peace* appeared during the wars resulting from the French Revolution; and it is interesting to compare the

[10] *Eccl. Polity*, I, 10.

[11] Except, perhaps, to the extent that by the law of nature an international person (state) has a right to rights. *Cf.* Ivor J. C. Brown, *The Meaning of Democracy*, 50.

propositions set forth in that essay with the declaration of the sovereigns of the Holy Alliance at Aix-la-Chapelle some twenty years afterwards.[12] We have in that declaration the doctrine that the peace of the world can be reached only by a recognition of the general principles of international law. While many international documents dating from the Peace of Utrecht may be called in a way law-making treaties, nevertheless the professedly law-making or law-recognizing treaties which characterize the nineteenth century began with the declaration of the Holy Alliance. In apparent opposition to this position there is to be found, in the second quarter of the nineteenth century, a considerable elaboration of the so-called fundamental rights of states set forth by those writers who were strongly attached to the idea of nationality, and especially by those who had the point of view of the small and relatively weak German states. Naturally enough, the doctrine of the absolute rights of states is attractive to those who sympathize with national aspirations as yet unrealized in strong political organization. The attainment of separate nationalities, not the insistence upon the old law of nature, allowed for this emphasis upon the fundamental rights of states. Within recent years, the recrudescence of a similar attitude toward the absolute rights of states is to be observed. As set forth by the American Institute of International Law, it is no doubt in part the product of a similar political situation. Generally, however, the idea of translating international rights and duties into the form of international commands by means of treaty gained headway through the nineteenth century and has its culmination in the conventions of The Hague Conferences of 1899 and 1907.

In so far as one is able to ascribe any sort of legal philosophy at all to most of the continental writers of the first half of the nineteenth century, it seems to be a legal philosophy based largely upon the ideas of Kant. The spirit of the Common Law and the influence of Austinian jurisprudence combined to emphasize the positive character of English contributions to the literature of the subject. And the same may, in general, be said of writings by American jurists. But in Germany there was proceeding a radical modification of the old conception of the law of nature based upon the philosophy of Hegel. It was logical that those who held to the doctrine, that legal ideas are matters of development, should resist an ultimate and definitive statement of them in statutory form. The great founder of the historical school of jurisprudence, Savigny, was notably opposed to the codification of German law. It is not difficult to see how an historical jurisprudence which, narrowly considered, regarded only the past, lacked a forward and ethical outlook. Therefore need was felt of a juristic philosophy which embodied an idealistic element through which improvement

[12] Declaration of the Five Cabinets, Aix-la-Chapelle, November 15, 1818, Hertslet, *The Map of Europe by Treaty*, I, 576.

and progress might be realized. As the ideal lay in harmony, the obvious inharmony of actualities must gradually give way to the embodiment in concrete form of idealistic aspiration.[13]

Still later there appeared the combined influences of evolution and of positivism. With evolution there is developed an essentially new conception of national progress. With Comte, progress was the development of order. Humanity was advancing, according to him, through three stages, theological, metaphysical, and positive. Comte's famous "three stages" have been discarded as statements of a law of progress. No law of progress has yet been formulated which will work. Indeed, the very idea of "progress" is but an "optimistic synonym for change."[14]

One must always be on one's guard against the fallacies of argument from analogy. For centuries political theorists have been fond of finding analogies in political organization from the human body; and while evolution has properly to do with biological processes only, it permitted a new emphasis, based upon the analogies between the physical and political body, to be given to the traditional organic or organismic theory of the state. To admit that evolution in law and political science is only by way of analogy, which breaks down when pressed too far, is not to deny the extraordinary influence which that doctrine has had upon the conception of law, as well as upon the social sciences generally. Professor Vinogradoff, in his *Historical Jurisprudence,* quotes the saying of Ihering's as the appropriate epigraph to the evolutionistic movement in social science:

> Law is not less a product of history than handicraft, naval construction, technical skill: as Nature did not provide Adam's soul with a ready-made conception of a kettle, of a ship, or of a steamer, even so she has not presented him with property, marriage, binding contracts, the State. And the same may be said of all moral rules. . . . The whole moral order is a product of history, or, to put it more definitely, of the striving towards ends, of the untiring activity and work of human reason tending to satisfy wants and to provide against difficulties.[15]

This teleological conception leads back, with many writers, to Hegel; and in Kohler there is a frank insistence upon a new form of the law of

[13] "There is in the course of social and national life [why not international?] a final, necessary, ideal principle which is always the same in the infinite variety of forms and changes of events. This principle is the idea of man or of common human nature, which acquires knowledge of its own unity through a gradual development and continual movement, and uses it to conquer multiplicite and discrepant special characteristics. If these fail, human nature would no longer be able to develop and progress, since it would have no restraints to overcome. There is no development, progress, or evolution where no defect is met, or where there is no imperfection to conquer." Miraglia, *Comparative Legal Philosophy,* 118.

[14] Bury, *The Idea of Progress,* 352.

[15] Vinogradoff, *Historical Jurisprudence,* 137, quoting Ihering, *Zweck im Recht,* II, 112.

nature, which he calls *Kulturrecht*. Unlike the old, unchangeable, inflexible law of nature, the neo-Hegelian law of nature is the active agency in the future development and ultimate attainment of cultural ideals.[16]

It is noteworthy, further, that notwithstanding the permeation of Hegelian ideas in the work of Kohler, he makes Bodin's theory of sovereignty the fundamental basis of international law. "Every modification of Bodin's theory," he says, "interferes with international law."[17]

Under no such Hegelian leadership as Kohler avows are those who regard, without necessary teleological connotations, law as a social product. The phrase *Ubi societas ibi jus est*—where there is society there is law—is a phrase not apparently to be found in the *Corpus Juris* of Justinian. As applied to international law, it seems to have made its first appearance in the writings of the German jurist, Heffter, about the middle of the nineteenth century. Much later Westlake used the phrase for the foundation of the whole system of international jurisprudence. Defining international law as the body of rules prevailing between the states, he said that states

> form a society the members of which claim from each other the observance of certain lines of conduct, capable of being expressed in general terms as rules, and hold themselves justified in mutually compelling such observance, by force if necessary; also that in such society the lines of conduct in question are observed with more or less regularity, either as the result of compulsion or in accordance with the statements which would support compulsion in case of need. It is an old saying *Ubi societas ibi jus est;* "where there is a society there is law." . . . The maxim correctly puts before us society and law as mutually dependent. . . . Without society no law; without law no society. When we assert that there is such a thing as international law, we assert that there is a society of states: when we recognize that there is a society of states, we recognize that there is international law.[18]

Thus international society is not a "natural" but a juristic idea. From Westlake's conception we are led to a consideration of the fundamental nature of international law in accordance with what is commonly known as the pragmatic point of view. It does not necessarily posit states as naturally in society, nor does it posit therefore a law of nature. The reconsideration of international law, from a pragmatic point of view, takes one at once into the facts of international life. It is not necessary even

[16] Kohler, *Die Grundlagen des Völkerrechts*, 3; *Lehrbuch der Rechtsphilosophie, Zweite Auflage*, 51-53; Geny, *Science et Technique en Droit Privé Positif*, II, 111-126.

[17] Kohler, *Grundlagen des Völkerrechts*, 3; *cf.*, A. Affolter, *Recht über den Staaten, Archiv für Rechts-und Wirtschaftsphilosophie*, xiv, 97-106.

[18] The Collected Papers of John Westlake on Public International Law, 3. A. R. Lord (*The Principles of Politics*, 1921, page 48), calls attention to the idea of *Societas* (partnership) in the Social Compact. No contractual conceptions inhere in the ideas of Society as expressed by Hooker, Vattel, Heffter, or Westlake.

to assume as a fundamental postulate Bodin's theory of sovereignty. It is certainly not proper to begin with a group of abstract entities called states to each of which are imputed sovereignty in the sense of Bodin and other categories from which rights and duties proceed.

What are the facts of international life? To answer this question, there must be, at the outset, recourse to political and physical geography. Frontiers are not irrevocable; but the physical configuration of the earth, if not inexorably fixing man's political organization, has had, and must continue to have, a preponderant influence upon it. The modern organization and methods of industry, commerce, and labor certainly afford phenomena that are truly international. A juristic scheme which is blind to fundamental differences based upon race or nationality, or to differences of culture, is as faulty as one which treats the subjects of international law as abstractions, indefinite in number, interchangeable in position, and equal in status. Certainly there is nothing more concrete than states, nothing less so than the State. An international law which conceives of states as absolute units, essentially equal, mutually exclusive, with the points of contact in time of peace largely formal and decorative, will not fit in with the facts of international life of the present time.

Or let us put it in another way. Law is a social product and international law the product of juristic international society. Nevertheless the content of international law has been largely determined by that rudimentary stage of international society in time of peace with which Grotius was familiar. To compass the relationships of modern international life, international law must increase its content. How can this be done? Certainly not by mere speculation; certainly not by the inculcation of the vague ideas of a shadowy internationalism; nor by the idea that the whole structure of international law is erected for the purpose of avoiding war. Much of the writing in the field unquestionably falls within the description which Matthew Arnold gave of religion, as "morality touched with emotion." Difficulties arise from two different sources. One is the assumption that international law is a perfected whole, with its content limited to the principles developed by an obsolete condition of international life. The other is the attempt to introduce into international law an artificial, even though idealistic, content, not as yet the expression of existing international relationships. By considering international law as a perfected body of principles, having what Bury calls "the illusion of finality," one falls back upon the absolute rights of states and thereby denies the possibilities of progress in international life. By which is meant change towards harmony in international relationships. At the opposite extreme is the creation of a super-state, a *civitas maxima*, which might attempt to formulate norms of rights and duties that are not, strictly speaking, international, but rather constitutional: evolving a Bundesrecht, not Völkerrecht, with another illusion of finality. A rational and practicable line of devel-

opment would seem to be the conscious perfection of the international law of procedure. The late Professor Maitland remarked that the principles of substantive common law were deposited through the interstices of procedure. Says Professor Vinagradoff:

> The modern stage of international law and procedure are at a stage corresponding to a great extent with the criminal and civil procedure of ancient law. Procedure begins to develop at a time when the element of public compulsion is absent or insignificant. The transitions from one stage to the other, from a legalized struggle to arbitration, and ultimately to fall within jurisdictional authority, are very gradual. Two circumstances contributed powerfully to effect the transition from international law to a law regulated by the commonwealth: the growth of a mediating power to which parties were forced to submit; and the increasing strength of the view that even imperfect compromise is better than open struggle.[19]

The traditional law of procedure between states in time of peace has been that of diplomacy; and war itself has been falsely designated by certain writers as the procedural process *par excellence* of international law. Later, international arbitration appears as an acceptable but not universal mode of settlement. It has developed a very precise law of procedure. Resort to it has not become universally compulsory, and its results, usually in the nature of compromise, are frequently imperfect. Arbitration proceeds from initial agreement. Considering the traditional nature of international persons, adjudication must proceed also from initial agreement, but with this essential difference: however all inclusive a general arbitration treaty may be, an agreement upon the specific question to be arbitrated, technically known as the *compromis*, remains an essential element in the process. The agreement to create an international court which shall have jurisdiction over a certain type of controversy between states, would eliminate the *compromis*, which so frequently in the past has opened the door to a compromise settlement by a court of arbitration. If a court is established with a jurisdiction agreed upon, whether or not its process is compulsory, it can then proceed to a judgment in accordance with the principles of law. By this process, not by codification, is the way of development in international law indicated. A court with jurisdiction defined needs no code of substantive law in order to reach a judgment. No code has been necessary in order to furnish the Supreme Court of the United States with a rule by which to settle controversies between States. It is law because the court enforces it, and enforced because it is law: thus are joined juristic fact and legal fiction.

The Federal Constitution provides that the Supreme Court of the United States shall have jurisdiction over all controversies between States. In other words, any controversy between States which can be settled by a judicial proceeding is within the jurisdiction of the Supreme Court of the

[19] Vinagradoff, *Historical Jurisprudence*, 351.

United States. Considering the allocation to each State of a definite legal *status quo* under the Constitution, no controversy between States of the Union is at the present time conceivable which is not a matter for judicial determination and settlement; but judicial determination and settlement do not mean, necessarily, the employment of force for the execution of the decree and judgment of the court in settling the controversy. The essential point is that, with reference to each other the States of the Union are in a condition of a legal *status quo,* and therefore controversies are based upon a legal relationship and not upon a political one.

There are those who would organize an international court of justice upon the pattern of the Supreme Court of the United States, in so far as it has jurisdiction over the States of the Union. The plan of the International Court of Justice, under the auspices of the League of Nations, originally provided for compulsory process, a stipulation stricken out when the plan was adopted by the Council and Assembly of the League of Nations. With a court organized and open, a state which would repudiate its process might soon come to be in the position of a state which declines arbitration, or, having accepted arbitration, refuses to abide by its award.

Certainly not at present, if ever, may one claim that all controversies between states are justiciable; that is to say, one cannot assume that all controversies between international persons are determinable by legal rules of action. Herein we must admit that international law now differs materially from municipal law. In theory, at least, all of the relationships of private life are potentially determined by legal rules. All external actions of persons are in municipal law either legal or illegal. To such an extent has social life within the states been determined and fixed by law, that there are no areas of external action by persons which are exempt from the field of legal protection or control. Within the state at any one time, an act is either legal or illegal, and the business of the court is to determine into which field the act falls. This result is the end of a process centuries long, by which law and government within the state have become inseparable. Policy within the state may result in the formulation and adoption of a new law; but within the state this is legal change. A new law rescinds or modifies a prior legal relationship. A new law creates a new legal relationship only in the sense that it modifies existing relationships.

In the field of international law, however, we are faced with an altogether different situation. There are still large areas of external action by states with reference to which positions are assumed which are neither legal nor illegal. They are simply non-legal, or strictly political. For we must not think of a law as a rule of action, necessarily implying penalties for its non-fulfillment. It is rather a means by which the individual or group in society may discount the future, by having certain future acts (interests) protected. In other words, while within the state the will of

the individual is assumed to be free, the execution of that will in external action proceeds, in theory at least, upon the basis of a potential and determinable *status quo*. In international life, some of the external acts of states have been determined wholly by policy; and to some extent policy has obstructed the extension of the purely legal area. International relationships represent, therefore, at any given time a static situation. A static situation does not mean fixity, so that no further development of legal relationship is possible. It means the substitution of a legal relationship for one that is not legal, but that legal relationship may afterwards be modified. Where policy occupies the field, the situation is still dynamic.

This is the essential distinction between the two classes of controversies commonly described as justiciable and non-justiciable. A justiciable controversy is one in which the external action of a state is challenged upon the ground that it does not conform to an established rule of action. A non-justiciable controversy is one in which the external action of a state is challenged, not upon the ground of its illegality, not upon the ground that a rule of action exists which is violated, but because with reference to it there is no legal rule of action. The occupation of these non-legal areas in international life by legal relationships, the change from a dynamic to a static situation, can come about only gradually and by the agreement of its members, gradually by tacit consent or through conscious agreement to reduce the dynamic to the static, reached in part by diplomatic adjustment, in part by law-making treaties, in part by the creation of an international judicial jurisdiction. Each member of international society comes thus in its external actions more and more to be able to discount the future. This is not, it must be confessed, the only basis for the antithesis of justiciable and non-justiciable controversies, for there are areas wherein international legal rights and duties cannot be enjoyed and perfected because of obstructive international policy. Here, one may insist, there is a legal conflict: that the political obstruction is an illegal obstruction. Answer may be made to this objection that it is the lack of solidarity in international life, the imperfection of international society, that permits the obstruction, and the situation is thereby recognized as dynamic rather than static, and hence non-legal.

The Covenant of the League of Nations recognizes this distinction. While it makes provision for an international court of justice in addition to the perpetuation of the machinery of international arbitration, and embodies in its preamble an appeal to the "understandings" of international law, the Covenant is framed upon the theory that machinery is necessary for the settlement of these dynamic, non-justiciable controversies. To the extent that the Council of the present League of Nations has jurisdiction over controversies, that jurisdiction is over non-justiciable disputes. And herein, in the minds of many, lies one of the greatest objections to the present Covenant of the League of Nations. The danger is felt by many

that the organization of the Council of the League of Nations and its control by preponderance of power will not make for a surrender of those areas in international life which should be governed by law. There is no doubt much to be made of this objection; but, having regard to the actualities of present international life, as the world is left as the result of the World War, political questions remain uppermost.

We should be blind to assert that the immediate results of the war have been the recovery of a larger area of strictly legal control. The peace settlement, in so far as it is a settlement, is, after all, a political settlement out of which political questions have arisen and will continue to arise. With reference to many of them, it would seem that no court could be created that in the near future could successfully adjudicate upon some of the larger problems which have already proceeded out of the treaties of peace. Having in mind the nature of the peace settlement, it follows that if the law of nations is to exist, it must rest upon the foundations made by the settlement. The consideration of the vitally important questions, all of them political, has so far been undertaken by the Supreme Allied Council or by a smaller group representing those nations immediately responsible for the victory and for the terms of settlement. Until these matters growing out of the treaties are settled, one cannot be assured of any very great advance in the adoption of purely legal rules of action among states. The fragments of the old Russian Empire, Germany, Austria, Hungary, Turkey, Greece, cannot be considered at the present time as factors in the development of international law. The mind of the world is still too much concentrated upon those fundamentally political questions which have resulted from the war to have any common ideas either for the development of international law by means of new law-making treaties, or for the codification of the law of peace as it existed prior to August of 1914. In that month, in a way, the old international law came to an end, for the invasion of Belgium and the retribution which is being exacted for that invasion and its results give a new and solider basis for international law than the world had ever before afforded.

Gladstone remarked, when the neutrality of Belgium was threatened in 1870, that the foundation of the public law of Europe lay in treaty faith. Bethmann-Hollweg admitted in the Reichstag, in August, 1914, that Germany was committing a supreme offense against the law of nations by violating the treaty for the neutralization of Belgium, but he claimed that necessity demanded it, and therefore even the violation was justified. The position of Germany today is the answer to that contention. The foundation of international law is the doctrine of *pacta servanda*; that treaties are to be respected and lived up to; that without recognition of the binding character of international obligations, legally as well as morally, there can be no international society in any juristic sense. But along with this idea there is the other, that international society has the right and duty

to express itself with reference to the nature of treaties that are thus to be preserved. A treaty that is secret, which aims at the detriment or destruction of other states, is an act essentially anti-social in nature, and in some way the world should be protected against it. No provision of the Covenant of the League of Nations more correctly expresses the better aspirations of modern international life than that which requires that treaties, in order to be respected, shall be made public.

An international organization has come to be essential to the existence of international law. It is not so much the business of international law to prepare a code for war, as it is to determine the rights and obligations of states in time of peace. Controversies between states will not cease any more than controversies between individuals within the state have disappeared. For a long time to come those controversies which are dangerous to the peace of the world are likely to be political and non-justiciable. Nevertheless, as order proceeds, as it must proceed, out of the present chaos, as interdependence goes forward among nations, further areas of international life are to be recovered from policy to law. The causes of war lie deep in political controversies. The occasions of war are frequently found in the violation of recognized legal right and duty.

Not underestimating the necessity of organization for the purpose of settling controversies of the first type, the need of an organization for the judicial settlement of international disputes, upon the basis of legal rights and duties by an international court of justice, is no less evident. By its very nature, an international court of justice will lack the dramatic qualities of an Allied Council or the Council of a League of Nations. Nevertheless, as an expression of the quiet and abiding convictions of international life, it may be a very potent factor in recovering the sense as well as the conscience of mankind. Founded upon treaty agreement, it will furnish the necessary basis for the modern structure of international law. In international organization there must be an embodiment, an expression, not merely of the aspirations of the few—it must be in immediate contact with the actualities of international life. The international law of the future, deriving a renewed vigor on the basis of international agreement from the creation of an international court of justice, must seek to interpret the actualities of international life, for in that way mainly, if not solely, can it become the "expression of the organized opinion of mankind."

GREEK INTERSTATE ASSOCIATIONS AND THE LEAGUE OF NATIONS

By A. E. R. Boak

Professor of Ancient History, University of Michigan

The political achievements of the Greek people are so manifold and so important that any student of modern politics naturally is tempted to turn to ancient Greece to find the origin of, or parallels to, recent developments in his own field. And so there are not wanting those who would see in certain unions or associations of Greek states anticipations of the ideas which are incorporated in the newly constituted League of Nations. However, the view that any close parallel to the League of Nations existed in the ancient Greek world is due, I believe, to a misinterpretation or idealization of the character and aims of these ancient associations. Accordingly, in the present article I shall try to give a survey of the chief types of interstate associations that arose in ancient Greece, besides suggesting certain changes in their current English nomenclature, which is apt to mislead the casual reader as to their true character.

When the Greeks made their way into the lower part of the Balkan peninsula which we now call Greece, they came in large racial groups, each distinguished by its ethnic name—Arcadians, Achæans, Bœotians, Thessalians, and so forth. Each of these *ethne*, if we may employ this convenient Greek term (corresponding to the German *stamm*), was itself composed of a number of smaller groups, which we call peoples or tribes. The *ethnos* constituted a religious as well as a loosely-knit political unit; it was the primitive Greek state, consisting of an association of larger and smaller kinsman groups.

Many of these *ethne* were broken up into smaller units in the course of the successive Greek migrations; others met a like fate after the final settlement of the Greeks in their historic abodes. This later dissolution of the ethnic associations was due in some cases to the rise of the *poleis* or city-states, in others to the development of independent rural communes, within the territory settled by the larger groups. However, although the *ethne* thus came to lose their original political significance, they regularly remained as religious associations, in which city-states or rural communes were united for the maintenance of their ancestral, ethnic

cults. In many cases the states which had a common ethnic bond maintained some sort of a political as well as a religious alliance, and later, as we shall see, the *ethnos* came to form the background of a new form of political association.

On the eastern coast of Greece city-states arose at a very early date upon the sites of towns of the Minoan epoch, and this type of political organization was carried by the Greeks to the islands of the Ægean Sea and the western coast of Asia Minor. It spread farther with the establishment of Greek colonies along the shores of the Mediterranean and Black Seas during the great period of expansion which began about the middle of the eighth century B.C. The result was that the Greek world was divided into hundreds of small sovereign states, some of them rural communes, but the great majority city-states, the presence of which made the history of Greece resemble that of the modern world rather than that of any modern nation, and also gave opportunity for the development of all forms of interstate associations.[1]

The *polis* or city-state came to be the characteristic type of Greek state and was the determining factor in the political as well as the cultural development of the Greek peoples. From the primitive tribal associations the *polis* inherited the conception of the state as a union of persons of common descent participating in a common cult. This conception fostered in each community an attitude of jealous exclusiveness towards its neighbors. The ideal of the city-state came to be self-sufficiency in the economic as well as in the political sense. Politically, this was expressed in a passionate devotion to freedom in foreign relations (*eleutheria*) and the right of each state to determine its own constitution (*autonomia*). However, in fact, the city-states were rarely, if ever, economically self-sustaining, and, in spite of their passion for their own political independence, they did not display the same regard for the freedom of their neighbors. Their foreign relations were usually determined by materialistic or imperialistic aims. And out of the welter of common and conflicting interests which consequently developed among the Greek states themselves or between them and their barbarian neighbors, arose the various forms of interstate relations which I now propose to examine.

Since we are only concerned at present with such relations as led to associations or unions of a more or less permanent character, involving the surrender of certain of the sovereign rights of the contracting parties in their international relations, we may pass over the peculiarly Greek institution of proxenia, and likewise the special treaties between states which aimed to secure commercial or legal advantages for their respective

[1] For a more detailed account of this transformation of the earlier ethnic groups, see Francotte, *La Polis grecque*, pp. 96-105; B. Keil, *Griechische Staatsaltertümer*, in Gercke and Norden's *Einleitung*, iii, pp. 299-311; H. Swoboda, in Hermann's *Lehrbuch der griechischen Staatsaltert mer*, iii, pp. 3-15.

citizens, or even to provide for the peaceful settlement of interstate disputes. However, in passing, we should note that the practice of settling such differences by arbitration was well established and frequently resorted to.

The interstate relationships which remain for our consideration might be either religious or political. A religious association of states was called either an amphictyony or a *koinon*. As far as we can see, there was no essential difference implied in the use of one or other of these terms, for an amphictyony is merely an association of "dwellers around" or neighbors, and a *koinon* is simply a "commune" or joint association, which might be either religious or political in character. But, although neither the word amphictyony or *koinon* in itself gives any clue as to the nature of these associations, it is clear that the joint maintenance of some particular cult was the *raison d'être* of each. The members of a religious league either might be states associated in the maintenance of the ancestral cult of the *ethnos* to which they belonged, or they might be peoples or communities which lacked this racial bond.

The famous Delphic Amphictyony is the only one of the religious leagues whose organization is known in any detail. Its members were twelve of the Greek ethnic groups, such as the Ionians and Dorians; a fact which places the origin of the Amphictyony prior to the disruption of these hordes and the rise of the sovereign city-states. The religious center of this league was at first the shrine of Artemis at Thermopylæ and later that of Apollo at Delphi. The policy of the Amphictyony was determined by a council in which each of the associated peoples had two votes, although in historic times the city-states of Athens and Thebes had acquired a permanent right to one of the votes of the *ethne* to which they belonged, the Ionians and the Bœotians respectively. The character and purpose of the Delphic Amphictyony is revealed in the words of the oath taken annually by the delegates sent to the council by the several peoples. They swore "not to raze to the ground any city belonging to members of the Amphictyony, nor shut it off from running water either in war or in peace; and, if any member transgresses these provisions, to proceed against him and destroy his cities; and, if anyone plunders the property of the god, or agrees upon, or plots anything against the sacred treasures, to take vengeance upon him with hand and foot and voice and full military force." (Æschines, ii, 115.) From this it is clear that the Delphic Amphictyony was an association for religious and not for political purposes. It is true that it insisted upon certain humane observances in war waged among members of the league, but it did not aim to prevent war even between them, probably because war was regarded as a perfectly normal condition. The Amphictyony was not active politically in the cause of Greek independence nor in the settlement of disputes among Greek states. However, it was at times exploited in the interest of the political ambi-

tions of some of its more influential members, especially Philip II of Macedon and the Ætolian Confederation.[2]

Turning from the religious to the political associations of Greek states, we find that the latter are of two distinct types: (1) those which are temporary and created for joint action under definite circumstances, *i.e.*, leagues or alliances, and (2) those which aim at the permanent establishment of a new and larger state, *i.e.*, confederations. Let us consider each of these types separately.

Apart from the religious leagues, alliances among the Greek states were regularly concluded for military purposes. Such military alliances were familiar to the Greeks from the earliest times, and can hardly be considered a development from religious associations. They might be concluded between all types of states, tribal, city or federal. They could be either offensive and defensive, or purely defensive in character. In the former case they were technically called *symmachiai*, in the latter *epimachiai*. The essential characteristic of these alliances was that each of the contracting parties retained its independence and its constitution, while all placed their military resources under a common authority in time of war. Most of the Greek military leagues were shortlived: two, however, were more stable unions whose presence profoundly affected the course of Greek history.

The older of the two was the Peloponnesian League, which was organized in the latter half of the sixth century and lasted until 371 B.C. This league was a Spartan creation, having as its basis a series of special alliances between Sparta and the majority of the states of the Peloponnesus, whereby each was obligated to give military aid to Sparta in case of an attack upon the Peloponnesus. Questions affecting the action of the league were decided by a council convoked to discuss each particular case. In this council each of the allied states had equal representation. The meetings were called by Sparta, and that state assumed command of the allied forces in time of war. The position which Sparta held in relation to her allies was termed by the Greeks an hegemony. It is to be noted that the Spartan allies had the right to carry on war against one another or against outside parties without reference to Sparta or the league.[3]

The second of the great leagues was the Delian League of 477 B.C., often miscalled the Confederacy of Delos.[4] It was a *symmachia* under Athenian

[2] On the Amphictyonies, see Cauer, in Pauly-Wissowa's *Realencyclopädie*, i, 1905 ff. A list of the pre-Roman religious *koina* among the Greeks is given in P. Giraud, *Les Assemblées provinciales dans l'empire romain*, pp. 40 ff.

[3] For the *symmachiai*, see Francotte, *op. cit.*, pp. 162 ff.; Keil, *op. cit.*, pp. 370 ff.

[4] For example by Bury, *History of Greece*, p. 328, etc. Coleman Phillipson, *International Law and Custom of Ancient Greece and Rome*, ii, pp. 13 ff. and 19 ff., with more exactness speaks of the First and Second Athenian Leagues. See the protest of Fougères in Daremberg and Saglio, iii, 1, 832, against the loose use of the epithet federal, and allied terms. British writers apparently use the word *confederacy* with

hegemony, organized for mutual protection and the avenging of the losses incurred at the hands of the Persians by Athens and the Ionian maritime states. The official designation of the league was 'the Athenian symmachia.'[5] In it, as in the Peloponnesian League, the allies were bound by special treaties with the leading state, whereby their *eleutheria* and *autonomia* were guaranteed. Here, too, provision was made for a council of the allies to determine the policy of the league, but Athens was entrusted with the command of the allied forces, the supervision of the treasury of the league, and the task of enforcing the other cities to fulfil their obligations. This position the Athenians used to deprive the majority of their allies of their freedom in external and internal affairs, so that they became subjects instead of allies, and the league developed into an empire (*archê*).[6]

Another good example of a *symmachia* is the second Athenian naval league, to which also the misleading term confederacy is sometimes applied. This league was formed in 378 B.C. to protect the independence of its members against Spartan aggression. Its organization is well known from an Athenian decree of 378/7 B.C.[7] The territorial integrity and the freedom of the contracting parties was expressly guaranteed in the following words: "If anyone of the Greeks or of the barbarians dwelling upon the mainland or upon the islands, provided that they are not subjects of the king, wishes to become an ally of the Athenians and their allies, he may do so, preserving his freedom and autonomy, in the enjoyment of the constitution he may prefer, without receiving a garrison or a governor, and without paying tribute, upon the same conditions as the Chians, the Thebans, and the other allies." The object of the alliance appears in the clause: "And if anyone shall make an attack upon those who have made the alliance either by land or by sea, the Athenians and the allies are to come to their rescue by land and by sea with their full strength in so far as they can." The members of this league were bound together not merely by separate treaties with Athens but also by treaties between each allied state and the group of the other allies. Provision was made for regular sessions of a council representing the allied states, but the final decision in matters affecting the policy of the league rested with the Athenian assembly.[8]

Before leaving the discussion of Greek military alliances, we should, I think, devote a little attention to the plan for an alliance of the Greek states advocated by the Athenian publicist Isocrates, and to the Hellenic

reference to an association of states to which they do not apply the title *confederation*. See *Encyclopedia Britannica*, art. *Confederation*. However, there is no justification for its application to a Greek *symmachia*.

[5] *Inscriptiones Græcæ*, i. 9.

[6] Francotte, 162 ff.; Keil, 371 ff.; Thucydides, i, 96 ff.

[7] *C. I. A.*, ii, 17=Michel, No. 86.

[8] Keil, 373-4.

leagues actually organized by Philip II in 337 B.C. and by some of his successors on the Macedonian throne in the following century.

The first half of the fourth century B.C. witnessed the bankruptcy of the city-state as a sovereign power. The whole Greek world was in a constant turmoil of foreign and civil warfare. The jealous rivalries of the various states had so weakened their resources and created such intense hatred amongst them that the decadent power of Persia could dictate the terms of a national peace for Hellas. Revolution and counter-revolution marked the internal life of the cities; pirates infested the Ægean Sea; trade languished, and its decline heightened the general economic distress. As a remedy for these conditions, Plato and Aristotle advocated the complete isolation of the *polis*, but Isocrates caught the vision of a Pan-Hellenic union.

This union was to take the form of a *symmachia* for war against Persia, a project which he thought could afford a basis for common action acceptable to all Greeks. The immediate aim of such a war would be the occupation of Asia Minor, which would open up a new field for colonization and relieve the overpopulation of Hellas. But the league was to accomplish more than that. It was to act as a guardian of the peace in Greece itself, to preserve the independence of the separate states, to police the seas, and to put an end to the interminable class and party warfare. At first Isocrates looked to his native city of Athens to take the lead in forming his projected alliance, but finding that his appeals to his fellow-citizens met with no response, he finally addressed himself to Philip II of Macedon, who was actually destined to accomplish the unification of Greece.[9]

The Pan-Hellenic league which Philip organized in 337 B.C. betrays the influence of the ideas of Isocrates. The Greek states south of Thermopylæ (except Sparta) and the insular allies of Athens were formed into a league for the preservation of peace in Hellas, the maintenance of the independence of its members in the enjoyment of their existing constitutions, the suppression of violent revolutions within the cities, and the defence of private property. The enforcement of these conditions was entrusted to a "common council of the Hellenes," which met at the Isthmus of Corinth and in which each member of the league had a representative. The league as a whole concluded a *symmachia* with Philip, whereby he received the right to command its forces on land and sea; the military obligations of the cities were definitely stated, but no tribute was imposed upon them. This creation of Philip's was not a Macedonian empire but a military alliance under Macedonian hegemony.[10] The Pan-Hellenic union was dissolved by Alexander in 324 B.C. when he issued

[9] J. Kessler, *Isokrates und die panhellenische Idee.*

[10] Beloch, *Griechische Geschichte*, ii, pp. 572 ff.

his demand for deification by the cities of Greece and thus proclaimed his intention to rule over the Greeks as an absolute monarch.

However, in the latter part of the third century another Hellenic league, which bears little resemblance to that of 337 B.C., was organized under Macedonian hegemony. This was the alliance which Antigonus Doson formed about 223 B.C. between Macedon and the federal states of the Thessalians, Bœotians, Epirotes, Phocians, Acarnanians, and Achæans, to which were afterward added Sparta and other states. The alliance rested upon treaties concluded by the individual states with Macedon, which respected the independence of these states, but placed certain restrictions upon their right of negotiation with outside Powers. The policy of the league was determined by a council presided over by the Macedonian king, but its decisions required the ratification of the individual states before becoming binding upon them. Obviously this league was nothing but a loose *symmachia:* its importance lies in the fact that it embraced all the important states of the Greek peninsula with the exception of the Ætolians.[11]

Finally, we come to the federal states. These interstate associations are distinguished from the leagues and alliances by the fact that they gave rise to new states, characterized by a federal citizenship, alongside of which the citizenships of the several associated communities still existed. They were what the Greeks termed *sympolities* in contrast to the *symmachies,* where no new state was created. The cities united in the federal states remained locally autonomous; the rights and obligations of each were identical. On the basis of the federal citizenship, the federal organs of government were established—assembly, council and magistrates, modeled upon the institutions of the city-states. The federal state, through these federal institutions, had complete control of foreign affairs, including the right to make war and peace, the control of military forces, the right of legislation in federal matters, of jurisdiction in crimes against itself, the power to settle disputes among the federated states, the sole right of coinage, and the power to deal directly with federal citizens and not merely through the medium of their respective city-states.[12]

Such federal states were characteristic of political life in the peninsula of Greece from the fourth century B.C. This development was due to the growing realization that the isolated city-state was doomed to count for little or nothing in the political world. This was particularly true after the rise of Macedon under Philip II and the conquests of Alexander. From that time onward the territorial states dominated the situation.

In nearly every case the federal states arose on an ethnic basis, that is to say, they were associations of cities or rural states belonging to the

[11] Polybius, iv, 9 and 15; Niccolini, *La Confederazione Achæa*, pp. 55 ff.

[12] Upon the whole question of the Greek federal states I have followed Swoboda, *op. cit.*, pp. 208 ff.

same *ethnos*. This is shown in the adoption of the ethnic name to designate the federal citizens, *e.g.*, Bœotians or Achæans. At times indeed the term *ethnos* itself was officially employed in the title of the federal state, although a more usual term was that of *koinon*, which we might translate commonwealth. Later in their history many of these federal unions admitted communities of a different ethnic group to membership upon an equal footing with the old members, but in such cases the new citizens received the ethnic name of the group to which they were admitted. The true federal states of the fourth and third centuries B.C. were preceded in most cases by loose associations of their component city-states, either in the form of religious leagues, military alliances, or even confederations which were not true federal states. An example of the latter is to be found in the Bœotian Confederation which lasted from 447 to 386 B.C.[13]

The most famous of these federal states were the Achæan and Ætolian Confederations, which unfortunately are more usually known by the misleading name of leagues. The former of these two states owed its importance to the statecraft of Aratus of Sicyon, who induced it to embark upon a policy of expansion and opposition to Macedon which eventually brought it to include almost the whole of the Peloponnesus and even some states beyond the Isthmus.

It remains for us to consider which, if any, of these types of association among the states of ancient Greece may be considered as a forerunner of the League of Nations. The League of Nations, as I interpret its constitution,[14] is a voluntary association of self-governing states for the purpose of promoting international peace and security. To this end these states agree to avoid secret preparations for war and to attempt to settle their disputes by arbitration before resorting to the verdict of arms. They also agree to respect and defend the territorial integrity and existing political independence of the members of the League.

Bearing these points in mind, I think that we shall find it exceedingly difficult to discover on Greek soil traces of any associations of states based upon the fundamental ideas of the League of Nations. The amphictyonies and other religious leagues had an entirely different basis and object. The federal states differed both in object and in organization. They are the historical antecedents of the United States of America, the Dominion of Canada, the Commonwealth of Australia, and the Union of South Africa, but not of the League of Nations. Perhaps we may say that there is a closer approach to the aims and constitution of the latter in the Pan-Hellenic program of Isocrates and the Hellenic League organized by Philip II of Macedon. Here, however, the qualification must be made that while this program and this league aimed to secure the preservation

[13] The constitution of this confederation has come to light through the recent discovery of the *Oxyrhynchus Hellenica*, q. v.

[14] See the prelude to the Covenant of the League of Nations, and article 1, *ibid.*

of peace in Hellas, they were organized also with a view to war against non-Greek states. Regarding the principle of arbitration, adopted by the League of Nations for the adjustment of international differences, we have noticed that it was employed very extensively by the Greeks but never under an organization such as that of this league.[15]

In conclusion, a study of the Greek leagues reveals the fact that the more important of them were only created and held together under the leadership of one state more powerful than the rest. The question suggests itself: Will the League of Nations fail unless some one powerful state or group of states is made responsible for the enforcement of its terms and has coercive power over the remaining members?

[15] See M. N. Tod, *International Arbitration amongst the Greeks.* Oxford, 1913.

ENEMY GOODS AND HOUSE OF TRADE

By Thomas Baty, LL.D., D.C.L.

Part II.*

The Trois Frères (Stewart, V, Adm. Cases, N.S. 1). The continued adherence of the British courts to the doctrine of a *locus pœnitentiæ*, even for persons domiciled in a country which becomes an enemy, is here seen. A Frenchman became naturalized in the United States and traded there. Ultimately, however, he left, with all his books and papers, on a French ship for France, intending to remain there permanently. War supervening between France and Britain, the ship put about, with the intention of returning to America. But she was taken by the British, and the trader's effects seized as prize. Liberty was given him to establish, by affidavit, the total abandonment of his intention of going to France.

The Virginie (Feb. 7, 1804, 5 C. Rob. 98). Mr. Lapierre was a native of France, and carried on business in New York. Being on a visit of some ten months to (French) San Domingo, he shipped goods there from Bordeaux, and returned to America. There seems to be nothing to show a domicile, and not much to argue a house of trade, in San Domingo. Yet the property was condemned.

Stowell laid decisive stress on Mr. Lapierre's political allegiance; far more, I think, than it could bear. The judgment almost amounts to asserting that, where the allegiance and temporary residence are the same, any business with the country of that allegiance will be liable to involve confiscation. "The native character easily reverts," says Stowell, "and it requires fewer circumstances to constitute domicil in the case of a native subject, than to impress the native character on one who is originally of another country." Yes, but the early return to New York should have negatived the *animus manendi*; and Stowell really admits it when he says: "Had the shipment been made for America, his asserted place of abode, it might have . . . afforded a presumption that he was in St. Domingo only for temporary purposes." But the fact of his early departure not only afforded that presumption, but practically proved it. It is probable that a fuller report would have shown that there was no real and substantial business proved to have been carried on by Mr. Lapierre in America;

* The first part of this article appeared in this Journal for April, 1921, pp. 198-231.

and the case would thus be an illustration of our principle that, if one's house of trade is under one's hat, it becomes highly important where one takes it.[1]

THE VROW ANNA CATHERINA (II.) (May 15, 1804). The point was here strongly urged in argument by the King's Advocate and Dr. Laurence (combining for once), which we have already laid stress upon, namely, that we have no case in which, apart from enemy partners, privileged trade or post-war interference, domiciled neutrals established in trade in a belligerent country are considered to be affected *quoad hoc* with the belligerent character. The point seems to have weighed to a considerable extent with the court. The case was one of Dutch East India goods sold by the Dutch East India Company to one Vonte, a Dutchman, and undersold, with the property, to neutrals. Stowell held the transfer valid and *bona fide*. Then, was there anything to stamp a specially Dutch national character on the business and the goods? No; they were but the produce of the soil exported by the planter;[2] they were not protected by the enemy flag and pass, as ships may be; they were not engaged in a privileged trade in close touch with the government; and, we may add, the trade was not picked up during war, but a traffic made in contemplation of peace.

If the transaction is to be impeached, therefore, it must be on the ground that it is one of those transactions which have such a national bottom and substance, that, without consideration of peace or war, they are exclusively and radically and fundamentally a national transaction; and in which the man who engages in them assumes *pro hoc vice*, the character of that nation.[3] Several circumstances approximate it to a Dutch transaction; for, unquestionably, there is a good deal of Dutch agency, and even of Dutch interest throughout; but is it so essentially Dutch that a foreign character cannot be predicated of it?

On the whole, the judge thought not.

It is important and helpful to notice the limitation put by Lord Stowell on the scope of the principle that the produce of enemy soil is enemy goods.

The produce of a person's own plantation, in the colony of an enemy, though shipped in time of peace, is liable to be considered as the property of the enemy, by reason that the proprietor has incorporated himself with the permanent interests of the nation, as a holder of the soil, and is to be taken as a part of that country, in that particular transaction, independent of his own personal residence and occupation.

This provides the answer to many of the conundrums that naturally arise as to the stage at which the produce of the soil loses its inherently

[1] Story disapproved of the decision: see *The Anne Green*, 1 Gall. 286.

[2] This is important; it provides a limitation to the scope of the principle that the produce of belligerent soil is belligerent. See *infra*.

[3] As a *general* definition, not pretending to furnish any concrete tests, it would hardly be possible to improve on this statement.

dangerous character. Not manufacture, not export, is the test—but the fact of passing out of the hands of the grower.[4]

THE JONGE KLASSINA (Nov. 20, 1804, 5 C. Rob. 297). I shall not be suspected of a pun if I say that this is the classical case on the subject. Mr. Ravie was a merchant and manufacturer. He carried on business (seemingly without partners) at Birmingham, Warwickshire, and in Amsterdam. Probably the Birmingham business was mostly manufacture; the Amsterdam business mostly export and import. A British license given to him as "of Birmingham" to "import" goods from Amsterdam was held not to extend to justify him in "exporting" them thence. It is difficult to gauge the real reason for this decision. True, Mr. Ravie had an exporting business in Amsterdam, but surely he would have had to buy from *some* source in Holland, possibly from an exporting house, so why might he not procure the goods from his own establishment. True, the name under which he traded at Amsterdam "Ravie & Co." was used in the charter-parties; but names ought not to matter. Had there been Dutch partners in the Amsterdam house, the circumstance of the name might have been very material. But the mere fact that the importer Ravie, making his permitted import, happened to use the name of the exporter, who was the same person, ought not to alter the fact that Ravie was doing what he had been told he might do,—get goods in Holland and bring them home. That they were his own goods, ready for disposal in Holland to all customers, should not have affected the question. The government need not have given him a license; but having given it, they ought not to have evaded it by saying that they would look upon him as an exporter instead. That he was carrying on a Dutch house of trade need not be denied; but as a Dutch merchant he was *functus officio* when he handed over the goods to himself for import into England. The observations, however, of Stowell, on Mr. Ravie's national character are important. He supplies a kind of key to the enigmas which arise in these complicated cases of dual personality, by adopting a suggestion made by the King's Advocate (Nicholl) and Robinson in argument, that it is the place where the transaction *originates* that confers on the goods concerned in it a hostile character.

> It is not said what is his native character, but it is much insisted on that he is settled in this country, and engaged in extensive manufactures here. Mr. Ravie must know, as those who have stated his case know perfectly well, that his meritorious establishment in this country, . . . cannot be permitted to affect this question. A man may have mercantile concerns in two countries; and if he acts as a merchant of both, he must be liable to be considered as a subject of both, with regard to the transactions originating respectively in those countries.

Stowell has thus taken the plunge and unequivocally adopted the doctrine of identification with, as distinguished from that of unneutral inter-

[4] Of course, not absolutely. Cf. *The Hope* (27 June, 1809, 1 Acton 44).

vention in, the enemy's trade. We have seen that doctrine, as in a glass darkly, in the appeal case of *Zacharie, Coopman & Co.*[5] We have seen Stowell apparently relying on the rival doctrine in the *Vigilantia* (1 C. Rob. 1), and we have seen counsel invoking it as a forlorn hope in the *Vrow Anna Catharina (II)*. But the *Jonge Klassina* cuts loose from it. There is no question of post-war interference being important any longer. An innocent trader, established in trade in peace time *in* the enemy's country, becomes *quoad hoc* an enemy unless he puts up his shutters. To have a house of trade there is to be, so far forth, an enemy.[6]

The judge proceeds: "That he has no fixed compting house in the enemy's country will not be decisive; how much of the great mercantile concerns of this kingdom is carried on in coffee-houses. A very considerable portion of the great insurance business is so conducted."

This is a useful observation. When we assert that domicile, for the purposes of prize law, is ordinary civil domicile, the school of Westlake replies, "No; it is mere trading residence." When we ask, What is the use of treating trading residence separately, when having a house of trade is of itself enough to condemn? they say, in effect, "A house of trade means an establishment of bricks and mortar;" which, according to this case, is precisely what it does not mean.

Stowell remarks:

> It is, indeed, a vain idea that a compting-house or fixed establishment is necessary to make a man a merchant of any place; if he is there himself,[7] and acts as a merchant of that place, it is sufficient; and the mere want of a fixed compting-house there, will make no breach in the mercantile character which may well exist without it. Mr. Ravie's own representation is "that he went to Holland for the purpose of arranging his mercantile concerns, and that he has for a long time carried on trade and business at Birmingham." As to his business at Birmingham, I may dismiss the whole of that circumstance, as what cannot admit of a doubt. The question will still remain, whether he is not also a merchant of Holland, in this particular transaction? He says, "that he employs Mr. V. as his agent at Amsterdam, to receive letters,[8] and that letters are addressed to him there to Ravie & Company at Amsterdam." This circumstance has

[5] This JOURNAL, April, 1921, p. 209.

[6] This is, of course, very far from saying, as Lord Lindley did, with much applause in Janson *v.* Driefontein Gold Mines, that "the national character of a merchant in time of war depends on where he carries on his business." (1902) A. C. 499.

[7] This is not an essential requisite, though it is common. It is, however, obvious that in practice, the local presence of the trader among the enemy exerts a great influence on the mind of the court. That it is not essential, is abundantly evident from the cases above noted.

[8] This was in the height of the Napoleonic wars; yet correspondence with agents in Amsterdam was not apparently made the subject, by Stowell, of the slightest futile comment, much less stigmatized as treason. He alluded feelingly to "the difficulties in carrying on correspondence with the enemy's countries" in the *Juffrow Catharina* (March 13, 1804, *ibid.* 142).

been contended to be parallel with the case of Mr. Portalis, who had agents at Bordeaux, and at various other places, whilst he himself was residing at Neufchatel. But there is this distinction which has been overlooked, —that Mr. Portalis did not appear to have been personally present at Bordeaux; he might have agents in different parts of the world, but he himself was resident at Neufchatel. If he had been himself at Bordeaux, that fact might have made a very material difference in his case. What is the situation of Mr. Ravie in this respect? He says, "that he has employed agents at Amsterdam, except at those times when he finds it convenient to go there," which may be three or five times in a year; at such times I am to suppose that he did not employ agents, but transacted his own business. What is meant by a nominal firm at that place, which I perceive in several passages of these affidavits, I am at a loss to understand, since Mr. Ravie appears to have been as substantially employed in the trade of Amsterdam, as any other mercantile firm of that place.

And in this particular transaction:

The charter-party is brought, not to Mr. V., his agent, but to himself, and he signs it as a merchant of Amsterdam. It would, I conceive, be too much for me to pronounce, that this can legally be done; or, in effect, that a man may go to the enemy's country as often as he pleases, under the authority of a license of this kind, and there act as a Dutch merchant, carrying on the export trade of that country.

This is clearly not Lord Lindley's principle that national character in time of war depends on where a person carries on his business. Personal presence and activity are evidently regarded as very important factors. We may gather from the observations of Lord Stowell that if the claimant had never gone personally to Holland, but had carried on an export business there by his agents, a more favorable view of the transaction might have been taken. This can only mean that in such a case it might have been held that his sole house of trade was in England, and that the Dutch export business carried on in Amsterdam was a mere branch of it. It is difficult to see any rational ground for the distinction; but it supports our proposition advanced above, that if business is carried on in the belligerent country by a principal or uncontrolled manager actually there, not being a business substantially limited to dealing with or through the neutral country with which the principal has paramount business interests,[9] it will be very difficult to say that we have not to do with a belligerent house of trade.

Of course, the main question in the case is beside our present purpose. Given that Ravie had a status as an enemy Dutch merchant, the question of whether at the time of capture, he was acting as an enemy exporter or as a licensed British importer, is one on which two opinions may be held.

[9] In the *Jonge Klassina*, the claimant had important business interests in England, but of course that only made the matter worse, as England was not neutral but hostile.

The main feature to be gathered from the *Jonge Klassina* is the prominence of the word "originating." Business, "originating" in the enemy's country, is enemy business. Yet, "originate" is not a conclusive word.[10] If an agent has the idea of a transaction in Baratavia, and furnishes the notion to his principals in Utopia, who act on it as of course, does the transaction originate with him or with them? Supposing, again, that a permanent agent for the sale of English machines in Costa Rica obtains an order from a customer. Does not the transaction "originate" in Costa Rica? It does not appear that the idea of "originating" carries us very far.

The other outstanding feature is the weight attached to the (temporary but habitually recurrent) personal presence and activity in the enemy country of the sole proprietor.

PORTALIS' CASE. It is tantalizing to know that this case is unreported. Search of the records for the papers and the evidence would be well worth undertaking. Portalis was established in Neufchatel. He had agents doing (apparently) general trade in various countries, including Bordeaux. This was held, it would seem, in the early years of the nineteenth century, not to amount to the establishment of a house of trade by him in France.[11] It would be all-important to know how these agents and their business differed from Mr. Sontag's agents in *The Indiana* [12] and Mr. Ostermeyer's in *The Portland*.[13] Was it because the Amsterdam and Ostend agencies had been at one time independent businesses, worked by the proprietors, Sontag and Ostermeyer, themselves? Or was it because the operations were all referable to Neufchatel. Scarcely the latter, as the citation of the case in *The Jonge Klassina* would have been devoid of point.

SIMPSON'S CASE (6 C. Rob. 127). This is only reported in the argument of Sir John Nicholl, LL.D., and Dr. Laurence, in *The Franklin* (*infra*). It was decided, apparently in 1805, by the Lords Commissioners of Appeals, and probably, as usual, under the impulse of Sir William Grant. Three brothers called Simpson were in partnership. The managing partner resided in America, and, presumably on this account, the house of trade was said to be "in America." Another resided in Scotland, and the third in London; and it may be taken that, as usual, residence means domicile. Goods were consigned to the enemy by the managing partner in London, but they were the goods of the partnership, and two-thirds of them were condemned. This determined that house of trade was a secondary criterion to domicile. The neutrality of the business does not matter if the personal domicile is hostile.

[10] As regards this question of "originating," see per Dexter (arg.) and Story in the *San José Indiano*, 2 Gall. 279.

[11] See per Stowell in the *Jonge Klassina*, 5 C. Rob. 303.

[12] This JOURNAL, April, 1921, p. 220.

[13] *Ibid.*, p. 221.

THE FRANKLIN (Diana, Master) (Sept. 13, 1805, 6 C. Rob. 127). Here, again, we have the personal domicile of Mr. W. Bell, living in England, operating to confiscate his share of tobacco belonging to himself and Mr. I. Bell, as partners, carrying on business in America. It is not a question of house of trade, except, indeed, that it might have been urged (as Wheaton, following Story and Marshall, put it in his *Elements*) that, if participation in an enemy house of trade was admitted to outweigh the neutral domicile of a claimant, *e converso* the neutral situation of his house of trade should be admitted to outweigh his enemy domicile. Such a principle would have disestablished domicile as a criterion of all mercantile property. It would have justified Lord Lindley's dictum that enemy character depends on where you trade; but, as Dana rightly comments, there is no inconsistency in condemning in both the cases advanced. Domicile among the enemy furnishes one mode of identification with enemy interests; trading among the enemy furnishes another. It may be reasonable to condemn a person's property on the ground of it being involved in enemy trade, without its being necessarily unreasonable to condemn it in spite of its being employed in neutral trade.

Stowell, indeed, seems to have inclined to Wheaton's view, and to have taken his doctrine from the superior court. "It has been decided by an authority to which this court must bow, that even an inactive or sleeping partner (as it is termed) cannot receive restitution in a transaction in which he could not lawfully be engaged as a sole trader" (*Scit.* on account of his domicile). Of course if he took (as Mr. W. Bell did) an active part in the business, the case was an *a fortiori* one. The case referred to seems to have been that of Simpson (*supra*), referred to in argument by the king's advocate and Dr. Laurence.

Briefly, to state the facts of *The Franklin*: I. and W. Bell were partners. I. Bell was resident, and apparently domiciled, in America. W. Bell was resident, and apparently domiciled, in London.[14] The curious view is taken by the court that their partnership was (like Mr. Ravie's commercial activity) not one house but two houses. There was the American house, "I. and W. Bell," and the English house "John and William Bell." Whether "I" (as is not unlikely) was the initial for "John," or whether "John" was originally the name of some other person, does not matter. Traders, like other people, can call themselves what they like. The partners were apparently the same, as, when the question of a severance *quoad* French business is mooted, it is only as between I. Bell and

[14] The reporter's statement of facts states the cargo as claimed "as the property of I. and W. Bell, partners in a house of trade in America, and also 'of' a house in London, where Mr. W. Bell resided, but claimed as the sole property of I. Bell of America." "Of" must surely here mean "in"; the cargo was certainly not claimed as the property "of" a London house.

W. Bell that the matter is discussed. No other partners are even remotely indicated. We have, therefore, I. Bell and W. Bell carrying on business in common under slightly different styles in England and America. It seems, to the present writer, like one business. But the judgment is an authority for the proposition that separate and independent accounts, if coupled with the presence of a partner or "uncontrolled manager," will create a separate house of trade, if general business is originated by the persons in charge.

I. Bell, in America, shipped 70 hogsheads of tobacco from Petersburg, in Virginia, for France; it was documented as, and even sworn and found to be the property of I. and W. Bell. Captured at sea, one-half of it was confiscated as the property of a domiciled British subject, trading with the enemy.

It will be seen that this case raises all the elements of doubt as to what constitutes a house of trade which have perplexed us from the outset. Here are two people carrying on business together; independent accounts are kept, and different styles used, at two different centers,—one partner attends to the one, and another to the other. Is it a house of trade in London? or in America? or in London and America? or is it (as seems to be assumed) two houses, one in each country?

The case furnishes the same kind of negative evidence as we have once or twice observed before, as to what does *not* constitute a house of trade. The whole concern might conceivably have been held to have been an English house, carrying on business by a partner in London, and maintaining an American branch, worked by a partner instead of an agent. In that view, I. and W. Bell would simply be the name by which "John and William Bell" of London were known in America. An international partnership of this kind, consisting of a series of ganglia rather than of a head and limbs, might well be regarded as a house of trade established in any of the countries where it has a nerve-center. However, Mr. I. Bell was not regarded as generally affected with the British character. No one would suppose that he was, merely because he carried on a certain business in London; but the point is, that his London partner also carried on business with him in America. How was it possible to separate the American and the British elements of the joint enterprise? It might be easy in the majority of cases. But suppose I. Bell, in Virginia, wrote to a customer in Liverpool selling him tobacco, and authorizing him to call upon William in London for delivery out of the stock of "John and William Bell." As a partner in that firm, he would be perfectly justified. Would the goods, in the transit from London to Liverpool, be the property of the London "house," or the Virginia one? I. Bell has picked them out of the orbit of the London business and put them in that of the Virginia one. So at least it might be argued. And such perplexities must be frequent,

so long as we try to regard the business carried on by a person or firm as two or more businesses.

THE ELEONORA WHILELMINA (Feb. 27, 1807, 6 C. Rob. 331). This is a minor case; but shows how important the ordinary civil domicile is in estimating national character. Stowell here declared that "Till I am better instructed, I shall hold that the national character of a man who has only just quitted the Prussian navigation, and has his wife and family still resident at Pillau (in Prussia), cannot fairly be considered 'as of the people of Russia,'" although he was master of a Russian vessel and had taken out a Riga "burgher's brief." Evidently the judge agreed with the King's Advocate and Dr. Laurence that "his domicile was still at Pillau."

THE JONGE RUITER (1 Acton 116). Here the claimant had a personal home in Papenberg (a favorite cloak for hostile commerce), where his wife lived and where he sometimes spent half the year himself (being at sea for the rest of his time). It was held he was domiciled there, and that his neutral character was not forfeited by his constant trade with the enemy country (1809). This leniency may usefully be compared with *The Susa* (1799, 2 C. Rob. 251), and *The Jonge Emilia* (1800, 3 C. Rob. 51). The case shows that repeated voyages to a belligerent country are not in themselves sufficient to impart the belligerent character to a shipping venture; they must be coupled with privilege or with the association of enemies in the business, as by repeated charters to enemy merchants.

THE ELIZABETH (16 May, 1811, 1 Acton 57). This case is just cited for counsel's observation that "although the claimants [who had removed from Trieste, on the French occupation, and gone to Vienna] might be accredited persons with the Austrian Government at Vienna, they might yet have an establishment of some commercial kind 'or even a house of trade' at Trieste also." This shows that a house of trade is not synonymous with a commercial establishment.

THE ANN (Feb. 19, 1813, 1 Dodson 221). This is the best deliverance we have on the subject from Lord Stowell. Mr. Smith, a native of Scotland, where his family still resided, went, about 1795, to America and was naturalized two years later. From 1799 to 1805 he was connected with a Glasgow "house of trade" which had "establishments" at New York and Charleston, at each of which places he occasionally resided. His connection with this firm seems to have ceased in 1805, but some time afterwards he bought *The Ann*, an American ship, sailed her twice to Jamaica, and then to London, where she was captured in 1812.

On the principles we have seen laid down in *The Vigilantia*, etc., he had clearly identified himself with America. His "house of trade" was certainly nowhere else. But a difficulty was created by the language of an Order in Council (Nov. 28, 1812), directing that vessels under the flag of the United States, *bona fide* the property of His Majesty's subjects,

of certain specified categories, should be restored to their British owners.[15] It might have been sufficient to say that it was not because he was under the American flag, but because her owner was identified with American trade, that the ship was libelled. The Order in Council could not have been meant to protect ships under the American flag which were confiscable on another ground, *e.g.*, for carrying of contraband. Stowell took the rather different line of declaring that Smith was not a British subject *quoad hoc*. He could not shake off his allegiance, but "for mere purposes of trade" [16] he might acquire a new national character. And "when the vessel is American-built, when the personal residence of the owner, as far as he has any, is in America (for it does not appear that this man at all resided in Scotland), it would be difficult to say that it could be any other than an American transaction." In short, Smith had cut loose from Scotland, except for his lonely wife and family. To the ports of Scotland he never sailed, nor does it appear that he even visited his wife and family in that country. He has been sailing constantly out of American ports. It is not the mere circumstances of having a wife and family in Scotland [17] that will avail him for the purpose of retaining the benefit of his national character for commercial purposes and, incidentally, for prize purposes.

THE ANN GREEN (Oct., 1912, 1 Gall. 274). Joseph Story here fully adopted the principle of domicile (permanent residence) as the grand criterion. Cullen shipped rum from Jamaica to Canada (prior to the War of 1812). He was a British subject, domiciled in the United States, but he made the shipment after an aggregate of four years' stay in Jamaica, and avowedly in the character of a British merchant. Story, calling *The Virginie* "rather strained," held in effect that Cullen had not a house of trade in Jamaica, he made the shipment without being engaged as a general merchant; nor was he domiciled there. So that "although the native character easily reverts," as he agreed, the temporary purpose (debt-collecting) with which Mr. Cullen went to Jamaica, prevented his regaining a British domicile. His rum was meant to liquidate his debts in New York, not to make money. It is impossible not to see that Story was much more lenient here than Stowell had been in *The Harmony, supra*, and *The Dree Gebroeders* (4 C. Rob. 232).

Cullen was a Scotchman; came to New York about 1795, at ten years of age; was naturalized in 1804; became a partner of a New York firm in 1807, and went debt-collecting in Jamaica half a year in 1808, about a year in 1810, and from October, 1811, on.

[15] This was a very common practice. It was, I think, begun on the occasion of war with Prussia in 1806 and repeated on various occasions when neutrals became enemies. Cases under the Order in Council in the Prussian case are in the London Record Office, 170 *Privy Council Registers*, 535 (July 2, 1806); and for the American order see 193 *ibid.*, Nov. 28, 1812.

[16] Not "by mere acts of trade."

[17] Cf. *The Harmony*, 2 C. Rob. 325.

THE FRANCES (Feb., 1814, 8 Cranch 335). Here Story held that a merchant, domiciled in an enemy country retains that character until he actually removes. He thinks that the note to *The Ocean* (5 C. Rob. 91), and *The Osprey* [18] prove this. One can only respectfully disagree.[19] Robinson's note only shows the precariousness of relying on intention *merely*.

Mr. Gillespie was born at Glasgow, went to the United States in 1793 and was naturalized in 1798. Next year, he married in Scotland, came to New York with his wife, returning with her in 1802. In 1805 he returned to New York and went into partnership with one John Graham. It was agreed that he should do its business in Britain (as Colin Gillespie & Co.) and that Graham should do it in New York (as John Graham & Company). Mr. Gillespie went to Scotland and accordingly set up "his" house of trade and resided there, not doing general, but only American business, "receiving" consignments of American produce, selling the same and purchasing goods in that market to ship to the United States. Consequently, one would have thought there was one house of trade, and that American, and that only Gillespie's share would have been confiscated. However, the court saw two houses, and condemned the whole shipment as the property of the enemy house.

THE FRANCES (Thompson's claim) (Feb., 1814, 8 Cranch 335). Here, a naturalized American, who set up a house of trade (but not, according to his own account, a domicile *animo manendi* in Scotland, was held to have "acquired a domicile" in that country (which was his native country). It would have been sufficient to hold that he had a house of trade there; and the case would stand alone in attributing to an individual a domicile without *animus manendi,* were it not for the fact that his intention to return rested solely on his own declarations. That is obviously insufficient; and the case is thus reduced to an ordinary one of domicile, similar to *The Venus, infra.*

It is necessary to state the claimant's commercial position. He appears to have been in partnership in America with domiciled Americans; then, in 1801, to have gone to Europe, on the business of the firm (called "his house"). In 1803 he settled in Glasgow, and carried on, up to the War of 1812, and even after its commencement, "that part of the business of the partnership which was to be transacted in Great Britain." Until we know what that business was, we can hardly see in this anything more than an American house of trade, doing business in Scotland through a partner. The partner's share was condemned evidently on account of his domicile *animo manendi.* The shares of the parties domiciled in America were restored. The fact that Thompson did eventually return to America was immaterial.

[18] This JOURNAL, April, 1921, p. 209.

[19] In the *S. Lawrence* (1815, 9 Cranch 120), Story himself still treats the question of withdrawal as an open question.

GILLESPIE'S CLAIM (Feb., 1814, 8 Cranch 363).[20] Here great stress was laid on the element of time. In response to detailed questions on further proof being made, it appeared that the claimant had been eight years carrying on the business of a partnership with J. Graham of New York, that his residence in America had been casual and infrequent, and that he had married in Scotland. Held: he had a Scottish domicile. It is clear, from the inquiries so prosecuted, that mere trading residence in Scotland was not of itself sufficient.

THE LOUISA (1814, Inner Temple Folio Prize Appeals [1812-15], fo. 115). Here a Venezuelan went to the States for reasons of health, and embarked on sporadic trade there. His wife and family remained at Caracas, and he only made three shipments altogether. The third, a considerable cargo of indigo, hides, chocolate and provisions, was despatched from an American port, but captured by the British. The Lords Commissioners of Appeal restored it, on appeal. Lushington and Brougham argued for the claimant (Vicente Rodriguez) that he was

> a neutral Spanish subject whose national character by birth and domicile is Spanish and whose temporary residence in the United States had no connection with commercial purposes,—but having originated in impaired health was subsequently prolonged against his inclination by a continuance of the same calamity and the prevalence of revolutionary conditions in his own country, which reduced him to great distress and rendered his immediate return impracticable.

The king's advocate (Robinson) and Garrow argue *contra* that

> matters of commiseration are difficult. But the question is not whether an alien away from home is not an object of pity. He was settled in the United States, and charters *The Louisa* for a voyage originating and terminating in America. He was living in the United States as a *merchant*, keeping his character [as such] open.

There is a MS. note on the record, "The question will turn on this: was he so abiding in New York as to have lost his original and national Spanish character, and ought he to be considered with reference to this transaction as an American merchant?" This may be a note of some remark of the judges, or a mere note by counsel for the proctor or client. It is neither very useful nor very accurate.

In the result, the Lords of Appeal must have held that he was not domiciled in New York, which is clear, and was not carrying on a house of trade there, which is less clear, but not inconsistent with authority, considering the very few commercial transactions involved in his American career.

This interesting case is nowhere reported.

[20] See *The Frances, supra.*

THE SAN JOSÉ INDIANO (Oct., 1814, 2 Gall. 268). This case[21] throws as much light as any on the national character of partners operating in various countries. And it distinguishes pretty clearly between trade and domicile. Here, Story is in entire harmony with Stowell in declaring that "The residence of a stationed agent in the enemy's country will not affect the trade of the neutral principal with a hostile character, yet this is true only of the ordinary trade of a neutral as such, carried on in the ordinary manner. But where such trade is carried on, not on the footing of a foreign merchant, but as a privileged trader, or *by an incorporation with the general commerce* of the enemy in the same manner, and with the same benefits, as a native merchant," it is taken to be hostile.

The unfortunate thing is, that it is left vague by both luminaries, what is the footing of a foreign merchant—the ordinary trade of a neutral, the general commerce of a country! Let us see if we can gather any light from the concrete facts: Britain was hostile; Portugal neutral. There were many claims, analyzed into three classes:

1. Houses in both Portugal and Britain.[22] Same partners.
2. Houses in both countries with some common partners.
3. House in Portugal, one partner doing business in Britain.

In the first case, we need to consider that there were "two houses," Dyson Bros. in England, and Dyson Bros. and Finney in Rio. But these had exactly the same partners. The property was going from "the house" in England to "the house" in Rio. In short, it was the property of a partnership which carried on business in the enemy country, if in Rio also. Where the preponderance of business was, and whether either center took up general business or not, we do not know. But it seems to be implied in Story's judgment that the English house was, or might be, the preponderant one. Two persons called Dyson, domiciled in England, and one J. Finney domiciled in Brazil, composed the partnership; and of course two-thirds of its goods were condemned on the ground of personal domicile. But was Finney's share involved? Yes, said the captors, the goods had been shipped at the account and risk of an English house of trade.

Said Story, J.:

> It is very clear that, in general, the national character of a person is to be decided by that of his domicile. . . . But the property of a person may acquire a hostile character, altogether independent of his own peculiar character derived from residence. . . . The origin of the property, or the traffic in which it is engaged, may stamp it with a hostile taint, although the owner may happen to be a neutral domiciled in a neutral country.

[21] The only one (it seems) in which an enemy by allegiance was treated as neutral, until we come to *The Abo* in the Crimean War.

[22] These terms are used shortly here to indicate the Portuguese and British dominions respectively, the former including Brazil.

Story thus clearly distinguishes domicile from trading, and implicitly condemns the idea of a specifically "commercial" domicile (except as a convenient phrase to denote the domicile of a person who happens to be a trader). He proceeds to instance entanglement in the privileged trade of the enemy, and the continued use of a vessel in enemy commerce. Such a trade, he adds, has a direct and immediate effect in aiding the resources and revenue of the enemy. It subserves his industries; it affords him taxable objects. Now here was a house of trade, established by British subjects in British territory, and habitually and continually carrying on British trade.

> It is true one partner is domiciled in the neutral country; but for what purposes? *For aught that appears, for purposes exclusively connected with the Liverpool establishment.* At all events, the whole property embarked in its commercial enterprises centers in that house, and receives its exclusive management and direction from it. Under such circumstances, the house is as purely British in its domicile (if I may use that expression) and in its commerce, as it could be if all the partners resided within the British empire.

This needs close analysis. The whole judgment appears to be colored by the conception of the Liverpool and Rio businesses as two independent entities, each carrying on a business sufficiently general to enable it to be represented as something more than a mere aspect of the activities of the other. But there are great difficulties in reading Story's language consistently with this supposition. He uses the phrase just quoted, "*its* commercial activities"; and the supposition in question would require "*it*" to mean "the Liverpool establishment." But he has just been speaking of an entity which *had* a Liverpool establishment; not of the Liverpool establishment itself. So that one would think that he referred to the partnership as an undivided whole. Again, it is rather redundant and futile to say that the property embarked in the enterprises of a house has a particular connection with that house; so one would again think that he was referring to the enterprises of the whole partnership, and was declaring that, though it carried the establishments at Liverpool and Rio, its property "received its exclusive management and direction" from the Liverpool center, and was thus affected with a British character.

It seems certain that Story's language is rather confused. We cannot be sure whether or not we have here a case of our proposition that when the preponderant management of a business is in one country, the mere fact that it does business (unless of a general character) in another, and even has a resident partner attending to it, will not make it anything but a single house whose character will be belligerent or neutral according to the character of the place of its preponderant activity; and its "house" or "establishment" in the minor center will be held to be a quasi-agency only. It may be that it is a mere case of the simpler proposition that when

one partnership (or person) carries on two general businesses in two different countries, their national characters will be kept distinct, but the residence of a partner or proprietor in the neutral country (or indeed in any other neutral country) will not exempt his share. It is a pity that we cannot be quite certain on the point, as the former case, though the less probable, is by far the more interesting.

Story recognizes that it is a new fact not found in Stowell's cases, that here we have a shipment from a house in the enemy's country indeed, but made *to* its connected house (and indeed to itself) in the neutral country. But he thinks that makes no difference. As a shipment made by a house in the enemy country on a voyage originating there, the goods must be condemned *en bloc*, without exemption of neutral interests. That would, of course, be so, whether the court saw in the transaction one entity or two. For the starting of the transaction was with the hostile one.

But now comes the second case where the houses differ in composition and an enemy house ships goods to a domiciled neutral partner or to his neutral firm there, and case three where a partner domiciled in the enemy country ships goods of its manufacture to his neutral firm [on its account and risk]. If, in the second case, the shipment by the enemy firm be on its own account, the recipient neutral partner or firm is only its agent, and "the property, in its origin, transit and return, is thoroughly imbued with the enemy character." So in the third case, if the partner in the enemy country is "really engaged in the general commerce of the country for the exclusive benefit of his neutral house," he is simply carrying on a general enemy business for *them*.

The captors, however, argued that a shipment from an enemy country was confiscable, if made to an individual partner domiciled in a neutral country, and for his account and risk.[23] This, Story considered would be to go too far. Transactions do not "originate" in a country when they are originated by mere agents there. And a shipment made by a partner or agent domiciled in the enemy's country to his neutral house as principal, on its exclusive account is equally exempt.[24]

Another shipment was made by a Manchester firm to Turner, Naylor & Co., Rio, on the joint account of both firms. The share of the Manchester firm was condemned, also one-third of the Rio firm's (which had one out of three partners domiciled in England). So far, good; but another ship-

[23] Or to a neutral house on the like terms. There is some confusion in the case of Dyson. The goods are said to be shipped on account of the Rio house (p. 284) and on account of the English house (p. 289).

[24] It is difficult to see, therefore, why (p. 298) the claim of a Rio house of Heyworth should have been rejected. The shipment is made by a house at Liverpool, composed of the same persons as the house at Rio to which it is consigned, and is upon the account and risk of the Rio House. "The case . . . falls directly within the decision" in the case of Dyson and the claim must be rejected. Perhaps "account and risk of the Rio House" ought to read, "account and risk of the Liverpool House."

ment to the same firm at Rio was sent by the order and at the account and risk of the Rio house by J. & J. Naylor of Wakefield. John Todd Naylor was a common partner of both firms; two-thirds were restored, except as regards a piece of stuff which did not appear to have been ordered from Rio, and was condemned. But "there appears . . . such an intricate relation both in blood and business, between the house at Wakefield and the house at Rio," that the judge ordered further proof as to the general connection in business between the two houses, and the terms, manner and circumstances under which those and other shipments had been made. This is difficult to understand, for he had ordered restitution to the neutral partner in the Dyson case, where the partners were precisely the same in both neutral and hostile houses, and could not well be more closely connected.

Then there was an interesting claim by P. F. Archango Dos Querubens, Procurator-General of the Religious Order of St. Antonio. This shows that cargoes do not (as Westlake once unguardedly argued) involve trading and merchants. The shipment was, however, so much mixed up with the goods shipped by Messrs. Naylor on their own account, that further proof was ordered.

We revert to sober commerce. March Bros. & Co., of Rio, had a partner described as "of Liverpool." Although not apparently trading there, his share of the shipment to the firm was confiscated.

With regard to the shipment to Seaton, Plowes & Co., a curious rule is applied, which presumes that in such a case "there are at least three partners entitled to equal shares:" Seaton was "of London," "Plowes of Rio," and two-thirds were leniently restored.

The next case is a house within a house. The partners in William Harrison & Co., Rio, were William Harrison of Rio and "the house of A. and R. Harrison & Latham of Liverpool." All parties in the latter house were domiciled in England; so a quarter was restored (*n.b.*, not a moiety).

Francis Sommers of Rio, and the Rev. John Sommers of Mid-Calder, made a shipment on joint account. "If Mid-Calder be, as I presume it is, in the north of England, a moiety must be condemned."

So far we have come across nothing to contradict the conception of domicile firmly held by Stowell. Permanent residence is the essence of it. A "commercial domicile" would have had no meaning for him, except as synonymous with "the domicile of a commercial man."[25] Trading is no necessary element in the acquisition of a national character. All that can be said is that if a man sets up business in a country, he is not unlikely to stay there. But we shall now find a case, in America, in which the

[25] Dexter puts the point neatly in the *San José Indiano:* "The question is simply as to the commercial character of the claimants. *It is personal, and does not relate to the branch of trade they are engaged in* (p. 277)."

criterion is attempted to be shifted from residence to trading, at any rate by counsel; while Chief Justice Marshall's inexplicable invention of a "commercial domicile" lends color to the same idea. Did Marshall, by "commercial domicile" mean simply the conception of house of trade, independent of residence, or did he have in view residence coupled with commercial activity in the same place? It strikes the investigator that what was really in his mind was an attempt to preserve the single term "domicile" as the criterion of enemy character, whilst including in it (1) true domicile and (2) commercial domicile (*i.e.*, house of trade), in which latter case it is the *business* which (so to speak) is "domiciled" in the hostile territory. Thus, Story J., in the *San José Indiano* alludes to a "house" as being "purely British in its domicile" (if I may use that expression). And Gaston, in argument, in *The Antoine Johanna* talks of a house having a "domicile." And again, "There must be an *animus manendi* to constitute domicile," says the same Dexter in the *San José Indiano* (1814, 2 Gall. 279).[26]

THE VENUS (March 12, 1814, 8 Cranch 253). This case by no means supports the proposition for which Halleck cites it, that a person *domiciled* (as distinguished from *resident*) in the enemy's country, cannot safely withdraw with his goods on the outbreak of war. All that it decides is that, as long as such persons remain in fact, their property is affected by their actual locality. This is seemingly inconsistent with the leniency shown in *The Ocean*, as will be apparent when we state the facts; but probably it can be reconciled by remembering that the party in *The Ocean* was forcibly detained by the enemy.

Maitland, McGregor & Jones, naturalized Americans, went back to Great Britain and established a "house of trade" there (see per Pitman, *arguendo*, p. 255). But the case does not seem to have concerned the property of that house. Before the outbreak of the War of 1812, they, individually, domiciled in Liverpool, shipped goods to England, asserted to be their joint property in varying shares. The ship was claimed by Maitland and one Lenox, together with considerable cargo. Much of the cargo was claimed by Maitland, Lenox and McGregor, a little for McGregor alone, and a quantity for McGregor & Jones. The goods can hardly therefore be said to be very obviously connected with the house of trade, in which Maitland, McGregor & Jones alone were partners. The case seems to rest on their individual domiciles. Unfortunately the court does not distinguish clearly between domicile and trading. Carried away by the fact that a merchant generally trades where he lives, they occasionally use language which confuses the two conceptions, and gives color to the notion that trade is an essential constituent of prize domicile; thus blurring the two criteria of house of trade and domicile.

[26] See also Twiss, *Law of Nations*, II, 306; Pitt Cobbett, *Leading Cases in International Law*, I, 209.

Washington, J., in his leading opinion, gives countenance to the Westlake-Lindley theory that domicile for prize purposes means something short of civil domicile. He adopts Vattel's definition, "a habitation fixed in any place, with an intention of always staying there." He does, however, undoubtedly limit the effect of domicile, by apparently cutting down the liability to confiscation to goods both connected with the place of residence (domicile) and concerned in the trade of the enemy. This is really to adopt as the test of confiscability domicile plus a house of trade. As such it is quite irreconcilable with British theory, which condemns all the goods of a person domiciled in the enemy country, wherever trading (the *Franklin*), and those of a person carrying on a house of trade there, wherever domiciled (the *Jonge Klassina*). Washington seems to repudiate the *Franklin* doctrine, treating domicile, as he does, as the sole test; but he does not appear to have noticed that he was adding to that sole test an additional requirement, *viz.*, that the trade should be carried on in the country of the domicile. He assumes, very naturally but quite gratuitously, that the person is carrying on trade where he is residing permanently. Actual removal, or "bona fide beginning to remove," on the outbreak of war, he expressly says, will change the national character. So that he explicitly allows, instead of contradicting (as Halleck would have it), the position that the person with an enemy domicile may safely quit [27] on the outbreak of war. But if the party remains in fact, he must expect unfavorable inferences. And if he waits until his property is captured before taking any decisive steps, he cannot snatch it out of the hand of the captor by subsequent determinations. "The character of the property, during war cannot be changed *in transitu*, by any act of the party, subsequent to the capture." And this, whether the doctrine of *The Danckebaar Africaan* (1 C. Rob. 107) be accepted or not, that it cannot be changed at all.

Story agreed with Washington, though in no detail; and Marshall (I believe, rightly) thought that the claim based on mere intention to return to the country of one's political allegiance ought to prevail. Grotius had placed the identification of a person with the belligerent on his permanent residence.[28] Vattel had done the same. Marshall accepts this test, as laid down by Vattel, and we cannot doubt that he meant to accept it *ex animo;* but in his preliminary skirmishing, he does speak of "a merchant residing abroad for commercial purposes," and "intending to continue in the foreign country . . . providing his commercial objects shall detain him [until a hypothetical event]." Clearly such a residence, meant to come to an end with the completion of particular business, falls short of domicile. But Marshall is not defining the test of enemy character. He is

[27] Unless, perhaps, of enemy political allegiance.

[28] P. 282. "All the subjects of the enemy who are such from a permanent cause . . . are liable to the law of reprisals. . . . Not so, if they are only trading or sojourning for a little time."

merely instancing a common case as introductory matter. When he gets to definitions, he is quite clear. "A domicil then, in a sense in which this term is used by Vattel, requires not only actual residence in a foreign country, but 'an intention of always staying there.' Actual residence without this intention amounts to no more than 'simple habitation.'" And he proceeds in the strongest terms to deny that mere residence confers the national character. "The intention which gives a domicil is an unconditional intention 'to stay always.'"

What his judgment really amounts to is, not (as Westlake would have it) that one can easily acquire a so-called "commercial domicile" which will give one an enemy character, but that a foreign merchant's residence, contingent, as it must be presumed to be, on the continuance of peace between the two nations, can never amount to domicile at all, unless conclusively proved by his staying in spite of war. This doctrine must surely be erroneous,[29] but whether right or wrong, it obviously affords no support to the notion that prize-law domicile is different from civil-law domicile, and is more easily established. Marshall admits that "less conclusive evidence than would seem to be required in general cases, by the law of nations, has been allowed to fix the domicil for commercial purposes." This may have been the case. But he declared that the nature of domicile for prize purposes remained unaltered; it still meant essentially permanent residence, and it does not appear that any of the other judges disagreed with this, or with its applicability as the test of enemy character. What he objected to was the presumption (p. 296) that a merchant of one country settled in another is intending to remain there always. That such a presumption exists is clear (*The Bernon*), that it is reasonable is fairly plain, and it can be rebutted. To stigmatize a domicile based upon it as a "commercial domicile," created by the mere fact of residence coupled with trading, is a potent fallacy. Marshall uses the term "commercial domicile" to mean a true domicile *presumed* (and perhaps often unjustifiably presumed) from the facts of residence and trading.[30] Those who rashly cite him in support of the assertion that national character depends on trading residence, use it to mean a new-fangled "domicile" created by trading residence.

We may note that Dexter, in argument, squarely stated that residence plus trading constitutes domicile. This is entirely without support from any decision, nor is any cited. Of course, trade is enough of itself to condemn one's goods without residence.

It is of some importance to note the careers of the parties. McGregor came to America a minor; and, after embarking in business, naturalization,

[29] The specific event of war is not necessarily contemplated by merchants when taking up their residence in a foreign country.

[30] His whole argument is that such a presumption is inapplicable in the event of war.

marriage and purchase of real estate (residing for twelve years in New York), he went back to Great Britain and in 1805 began business in Liverpool. Says Stockton, *arguendo* (p. 261), "His employment was that of an American merchant shipping goods from England, and receiving American produce there to sell on commission;" and he rightly observes that McGregor's own goods could not be affected by his having English partners. He thus makes the ingenious attempt to represent him in his several capacities, as an American locally in England, but carrying on an essentially American trade. I am not quite sure that the plea would not have succeeded before Stowell. It was not until he sent butter to a strange country, Portugal, that Stowell viewed Grant's proceedings in a serious light in *The Dree Gebroeders.* As above stated, McGregor returned to America ten months after the capture (p. 270), and his delay clearly justified the court in condemning his goods.

Lenox and Maitland had their house of trade (J. Lenox & W. Maitland) in New York, where both were naturalized and held real estate. Lenox remained in New York, but Maitland went to England in July, 1810. In 1811 he took a counting-house at Liverpool and carried on business as "W. Maitland & Co." for himself and his partner Lenox. Were there then two houses, or one house, and were they American or English, or both? It would seem plausible to say that one house alone subsisted (under different names), and that it was essentially an American house. Maitland's share might be confiscable through his personal domicile, Lenox's share for his fraudulent conduct (see p. 276). Maitland was still in England in April, 1813, the capture having been on August 6, 1812. The court, however, seems to have regarded the partnership as a different entity when operating in England from what it was when operating in America. Unlike *The Herman* (4 C. Rob. 228), we have, as in *The Franklin,* a case where the partners are precisely the same; and their English business may have been of a purely American texture, but (seemingly) not confined to the receipt and marketing of goods forwarded by their own American establishment. They had taken up the position in England of English merchants doing a general American trade.

On the whole, it appears an irresistible conclusion that the American court had not quite succeeded in separating the radically different conceptions of domicile and house of trade. They appear to confuse the two, and to assume that where the one is, the other must be also. Harper, indeed, *arguendo* (p. 267), attempts to substitute trading for time as the criterion of what should constitute domicile![31]

It appears to be to this case, with its failure to distinguish domicile

[31] And, in *The Frances,* he says plainly, "It is the nature of the trade, not the place of residence, which determines the hostile or neutral character of the trader." (8 Cranch 369.)

from trading, that the subsequent confusion is to be attributed.[32] We shall consider ourselves absolved from going at length into the modern cases, and shall only cite one as typical (*The Aina, infra*).

SOCIETY FOR THE PROPAGATION OF THE GOSPEL v. WHEELER (October, 1814, 2 Gall. 130). The strongest possible repudiation of the idea that domicile for prize-law purposes is a "commercial domicile" dependent on trading, is found in the present case, decided seven months after *The Venus*, and after full opportunity of discussion. And the judgment is by Story, whose language in *The Venus* and *The Frances* is thus seen to have reference solely to the facts of those particular (mercantile) cases.

> A neutral, or a citizen of the United States, who is domiciled in the enemy's country . . . is deemed as much an alien enemy, as a person actually born under the allegiance and residing within the dominions of the hostile nation. . . . And the same principle has been applied to a house of trade established in a hostile country, although the parties might happen to have a neutral domicile; . . . But it is not the private character or conduct of an individual, which gives him the neutral or hostile character. It is the character of the nation, to which he belongs and where he resides. *He may be retired from all business*, devoted to mere spiritual affairs, or engaged in works of charity, religion and humanity, and yet his domicile will prevail over the innocence and purity of his life.

This is conclusive that domicile, for prize purposes, does not mean trading residence.

THE ELISIA. (Inner Temple Folio Prize appeals [1813-14] fo. 472.) The advocates of the theory that place of business is everything in war must find considerable difficulty in the case of *The Elisia* (now for the first time, like *The Louisa*, made public). The owner of ship and cargo (one Davis) was a subject of King George III, and regarded himself as domiciled in Ireland. But his commercial center was certainly nowhere in the United Kingdom. Being at Lisbon early in 1810, he bought an American vessel, got a Papenberg register for her, and christened her *The Elisia*. He went to Waterford in her, and loaded glass for America, proceeding

[32] *Murray* v. *The Charming Betsy* (February, 1804, 2 Cranch 64). This is the case which probably became the innocent cause of the unfortunate expression "commercial domicile." An American non-intercourse act was held not applicable to a person domiciled and trading in Danish territory. Obviously a just decision, if a lenient one, but having no bearing on the subject of prize. For the whole object of the act was commercial, to discourage commercial intercourse between America and France. The whole act being directed to trade, his place of trading was supremely important. The personal domicile was quite immaterial.

Shattuck, the claimant, had done all he could to make a Dane of himself, having even become naturalized. In these circumstances Marshall, C. J., declared that domicile abroad may confer the commercial privileges of the place. But he nowhere says that only "commercial" domicile can confer the character of the place.

The interesting case of *The Constant* is cited from Comynge Reports (677). (Scott *v.* Schwarz.) English subjects domiciled in Russia were held to be Russians for the purposes of navigation acts. They were "of that country or place."

thither with that cargo. Subsequently, the ship voyaged to Ireland with naval stores, and back with glass and whiskey. She then went again to Ireland, and proceeded to Lisbon and St. Ubes, returning to America; and lastly performed another journey to Ireland and back. War between the United States and the United Kingdom having then broken out, Davis "determined to quit that country" where he was apparently established meanwhile, attending to these various shipments. He loaded *The Elisia* with what property he could collect, and she started for St. Bartholomew, during which voyage she was taken by *The Statira* and *Æotius* as American property.

Davis deposed that he only went to the United States "for convenience," which must surely mean business convenience, and the court, if it had held that the place of business was decisive and that domicile in prize law meant trading residence, must have told him that his civil domicile, even if Irish, did not matter. But the Lords of Appeal (1815) restored him his property, in spite of its American origin, in spite of the master's and supercargo's deposition that he was still living in Bath, U. S. A. The case seems, therefore, a strong authority, like *The Louisa*[33] (and to a certain extent *The Harmony*) that it takes more than a few isolated acts of commerce to constitute a house of trade, even if there be personal presence in the enemy country and no house of trade elsewhere.

The Mary and Susan (II) (1816, 1 Wheat. 46). In a note to report of this case (p. 54), Wheaton develops the doctrine of so-called "commercial domicile." He squarely defines domicile as "commercial inhabitancy"; thus effectually mixing up the ideas of house of trade and domicile. The strange thing is that he never speaks of domicile as "commercial inhabitancy" in his *Elements*,[34] nor does he fail there to distinguish accurately and succinctly between the two conceptions. The effect of such a doctrine as is developed in this note of his, would be to make a house of trade in an enemy country exempt from attack unless the proprietor resided there, which is certainly not the case. Moreover, he cites in support of it the Act of Congress of March 3, 1800, which applies a rule of salvage reciprocity to "the vessels or goods of persons *permanently resident* within the territory . . . of any foreign government," saying no word about trading there.[35]

[33] This Journal, April, 1921, p. 225.

[34] And see work on *Captures* (pp. 102-150), and his elaborate appendix to Vol. 2 of his Reports, especially p. 29. "If his own personal residence be in the hostile country, his share in the property of the neutral house is subject to condemnation." The first text-book which appears to identify prize domicile with trade seems to be Thompson's *Laws of War* (1852, p. 27). There was the less excuse for it, as Wildman had in 1850 clearly distinguished trading from domicile, and pointed out that either may involve the attribution of an enemy character (*International Law*, p. 45).

[35] See also The *Amado* (1847), Newberry, 400, and De Luneville *v.* Phillips (1806), 2 New Rep., 97.

THE ANTONIA JOHANNA (1816, 1 Wheat. 159). Here we get the common case of two parties carrying on business in two countries under different styles. William S. Burnett was domiciled in hostile British, and William Ivens in neutral Portuguese, territory. They were partners, and called themselves Burnett & Co. in London, and Ivens & Burnett at St. Michaels. These the court treated as two separate "houses." Considering the goods as the property of the Portuguese house, they condemned the share of Burnett because of his hostile domicile. It does not appear that the fact that Burnett was trading in that domicile was regarded as important. And the term "commercial domicile" is quietly dropped.

Wheaton, for the captors, endeavored to condemn Ivens' share also. The partnership was one, wherever it was, and a shipment like this, from the house at London to the house at St. Michaels, though expressed to be at the order and for the account and risk of the latter house, was really a shipment by Ivens & Burnett from themselves to themselves. How could it be called an exclusively Portuguese transaction? One cannot but think the argument entitled to great weight. It is much like that which prevailed in the *Jonge Klassina.*

It may here be added that Gaston, in argument, uses again the curious phrase of "a house" having a domicile. This marks the importance which trading and the place of trade had now reached in American cases. It is further worth notice that Wheaton seems to argue that neutrals trading with the enemy country are restricted to the use of commission merchants and supercargoes. This seems to be inconsistent with *The Anna Catharine;* and, if correct, would prevent a neutral firm from maintaining in the hostile country an agency for the distribution of its own goods. Dexter goes almost equally far in the *San José Indiano* (p. 277).

THE DOS HERMANOS (1817, 2 Wheat. 77). Here it was apparently doubted whether a born subject can by emigration *flagrante bello* reacquire a neutral domicile which he at one time had. But the interest of the case to us lies in the fact that Key, *arguendo,* still upheld the classical doctrine, and urged that the residence and trading of Mr. Green, the claimant, in neutral Carthagena was without sufficient *animus manendi.* The case went off on a point of procedure.

THE FRIENDSCHAFT (I) (1818, 3 Wheat. 14). Here the claimant, Winn, had lived at Lisbon some years prior to 1814, when he went (June 12th) to Bordeaux, leaving his staff of clerks, etc., attending to his business for him. He subsequently came to London, where he was on June 29, 1815, intending to return to Portugal. As he was originally domiciled in England, the captors tried to argue that his national character had reverted, on the strength of *The Virginie.* It is not surprising that they were unsuccessful. Had the captured goods been connected with the business done by him in England, we might have had more light thrown on the subject of house of trade.

THE FRIENDSCHAFT (II) (4 Wheat. 105). This case may be cited because there can be no possible doubt that "domicile" was used in it as meaning permanent residence, totally independent of trade. Moreira, Vieira & Machado, carrying on business in London, had a senior partner "domiciled" at Lisbon. The two junior partners were domiciled in London. Moreira applied for restitution of his share because of his domicile in Portugal. If domicile meant trading residence, he could have stated himself out of court, because he was not trading there. He failed, of course, because neutral domicile does not save one's share in an enemy house of trade. But no one told him that he had not a Portuguese domicile, or distinguished between his "domicile" in Portugal and his partners' "domicile" in England. Story, J., simply says, "The only question is, whether the share of Moreira is exempt from condemnation by reason of his neutral domicile." He does not tell him that his domicile in Lisbon is not a domicile in the sense of prize law at all. He says in effect that it is, but that in the circumstances it does not help him.

ELBERS v. KRAFT (16 Johnson, 128). This case, the last that need be cited prior to modern days, was decided in America in 1819, and clearly shows that the old conception of domicile still prevailed in prize law. No new-fangled "commercial domicile" is referred to, and it is probable that by 1819 it had become apparent that the conception of domicile as a test of enemy character was perfectly distinct from that of trading as a like test. The latter, though often confused with trading residence (commercial domicile), or confused with domicile (the domicile of a house, if I may so speak), was probably by this time analyzed as a thing apart. It is worth setting out the facts, as it is one of the few cases in which the neutral character of the trade was held insufficient to outweigh the belligerent character of the personal residence.

A. and B. had a house of trade in a Swedish island (S. Bartholomew's), but B. was in America doing business and maintaining agents on account of the partnership. Was it a Swedish business, or an American one, that B. was carrying on? It would have been truly interesting to know, but the shipment had no special connection with the business B. was carrying on in America, so the point did not arise. The goods were consigned to A. and B. at St. Bartholomew's, *i.e.*, to a Swedish house of trade. But B.'s share was condemned as American property on account of his personal permanent residence.

"The only question," per Spencer, J., "is, whether Kraft was temporarily here, or whether he was here *animo manendi*. He having remained in the United States for such a length of time [two or three years] the presumption of law is that it was his intention to reside there permanently . . . The absence of all proof that B. was here temporarily, or that he intended to return at any future time to S. Bartholomew's is decisive that he had an indefinite intention to remain here; and especially as he was

actually engaged in superintending the business of his house in their concerns in this country."

The judge here seems to regard the business carried on by the partnership in S. Bartholomew's and in America as one individual house. It may have contributed to this that Mr. Kraft had no fixed counting-house in America, so that the great preponderance may have lain with the center of the business at S. Bartholomew's. Or the American business may not have been of a general character. From the English case of *The Ann*, a copy of the record of which is in the Inner Temple Library[36] we gather that both Elbers and Kraft customarily resided in S. Bartholomew's and were Swedes by national allegiance.

THE AINA (June 21, 1854, Spinks, 316). Here Lushington, D.C.L.,[37] gave it as his opinion that where a neutral "continues to reside in the enemy's country for purposes of trade, he is considered as adhering to the enemy, and is disqualified from claiming as a neutral altogether." This is clearly too wide, and quite inconsistent with Stowell's opinion in *The Anna Catharine*. If he has a house of trade in the enemy's country, it does not matter whether he resides there. If he has not, but resides there for the purpose of carrying on his own foreign trade, he is at perfect liberty to do so; provided, he has no intention of remaining permanently. The *dictum* was not necessary to the decision.

IV. CONCLUSION

The authorities are scanty, so far as the facts of trading go. The principles are vague and elusive. Possibly the whole subject requires reexamination, and the elements of (1) soil, (2) manufacture, (3) distribution, (4) expenditure of profits (domicile), taken into scientific account. Meanwhile it would be a pity that the subject of house of trade should be relegated to the list of those of which it is dangerous to venture on a definition,—like Fraud and Reasonableness. Merchants ought to be able to know where they stand, and should not be exposed to the fluctuations of belligerent prejudice.

[36] Folio Prize Appeals (1813-14), fo. 418.

[37] It is a current jest in the Temple (not at all justified) that Lushington was "always wrong." In *The Abö* (*ib.* 349) he made the statement that "in time of war a person is considered as belonging to that nation where he is resident and where he carries on his trade,"—again a very questionable deliverance.

EDITORIAL COMMENT

PRESIDENT HARDING'S FOREIGN POLICY

On the 12th of April, 1921, President Harding appeared before the Congress of the United States in joint and extraordinary session and delivered in person his first message to the legislative branch of the Government of the Union. In the concluding portion of his message, he dwelt upon foreign relations, and he stated, it would seem, in clear and unmistakable terms the attitude of the government in so far as he could express it at that time toward the League of Nations. He said, by way of introduction:

> It ill becomes us to express impatience that the European belligerents are not yet in full agreement, when we ourselves have been unable to bring constituted authority into accord in our own relations to the formally proclaimed peace.
>
> Little avails in reciting the causes of delay in Europe or our own failure to agree. But there is no longer excuse for uncertainties respecting some phases of our foreign relationship.

And amid enthusiastic applause, as recorded in the *Congressional Record,* he continued: "In the existing League of Nations, world-governing with its super-powers, this Republic will have no part." Then, amid applause, he added: "There can be no misinterpretation, and there will be no betrayal of the deliberate expression of the American people in the recent election; and, settled in our decision for ourselves, it is only fair to say to the world in general, and to our associates in war in particular, that the League Covenant can have no sanction by us."

President Harding, however, was unwilling to disassociate himself from the purpose which the advocates of international organization sought to secure through the League, although he was outspoken in this passage and in other portions of his address against the method by which this purpose was to be realized. Thus, he continued: "The aim to associate nations to prevent war, preserve peace, and promote civilization our people most cordially applauded. We yearned for this new instrument of justice, but we can have no part in a committal to an agency of force in unknown contingencies; we can recognize no super-authority." To President Harding the League is an agency of force, and it apparently defeated its purpose through the element of force and through its connection with the Treaty of Versailles. "Manifestly the highest purpose of the League of Nations was defeated in linking it with the treaty of peace and making it the enforcing agency of the victors in the war."

So far, President Harding's attitude was analytical and largely negative. In the very next portion of his address he states the principles of coöperation: "International association for permanent peace must be conceived solely as an instrumentality of justice, unassociated with the passions of yesterday." Upon this foundation he proceeds to build:

> The American aspiration, indeed, the world aspiration, was an association of nations, based upon the application of justice and right, binding us in conference and coöperation for the prevention of war and pointing the way to a higher civilization and international fraternity in which all the world might share. In rejecting the league covenant and uttering that rejection to our own people, and to the world, we make no surrender of our hope and aim for an association to promote peace in which we would most heartily join. We wish it to be conceived in peace and dedicated to peace, and will relinquish no effort to bring the nations of the world into such fellowship, not in the surrender of national sovereignty but rejoicing in a nobler exercise of it in the advancement of human activities, amid the compensations of peaceful achievement.

President Harding had, in an earlier portion of his address, called attention to the fact that two years and a half after the armistice we find ourselves technically in a state of war. This state of things should be, in his opinion, ended, and he expressed himself willing to sign a resolution of the Congress "to establish the state of technical peace without further delay." He recognized, however, that such a declaration would merely end the war with Germany, with Austria and with Hungary, to which the United States was a party, and that it would be necessary to negotiate treaties and conventions in order to determine our future relations with those countries. In doing so, he was mindful to point out that we should not forget, indeed that we could not forget, the countries with which we were associated in the war. What will be the content of these various treaties and conventions we do not as yet know. Undoubtedly, the purpose of the Administration is to end the war and then to define its relationship with associates and enemies. After which, the question of association with friendly nations, for all will then be in a state of peace, will be taken up. Thus he said:

> With the supergoverning League definitely rejected and with the world so informed, and with the status of peace proclaimed at home, we may proceed to negotiate the covenanted relationship so essential to the recognition of all the rights everywhere of our own Nation and play our full part in joining the peoples of the world in the pursuits of peace once more. Our obligations in effecting European tranquillity, because of war's involvements, are not less impelling than our part in the war itself. This restoration must be wrought before the human procession can go onward again. We can be helpful because we are moved by no hatreds and harbor no fears. Helpfulness does not mean entanglement, and participation in economic adjustments does not mean sponsorship for treaty commitments which do not concern us, and in which we will have no part.

The address which President Harding delivered to the Congress was before its delivery submitted to the members of the Foreign Relations

Committee of the Senate. It met with their approval. Greater evidence of his desire to coöperate with his colleagues of the Senate could not have been given, and it augurs well for coöperation in the future. But coöperation does not mean surrender. President Harding has, on more than one occasion, manifested his intention to perform the duties and to exercise the prerogatives of the office of President. He will, of course, as chief executive, conduct the foreign relations of the government in conjunction with Secretary of State Hughes, or, rather, Mr. Hughes will negotiate in conjunction with the President, inasmuch as Mr. Harding has stated that Mr. Hughes is to be Secretary of State in fact as well as in name. President Harding, however, will doubtless, as a prudent man, sound the Senate in advance as to what that branch of the treaty-making power will accept and, through coöperation, avoid the risk of having this country's commitments to its associates in the late war repudiated. This is not conjecture. As he himself says, "I shall invite in the most practical way the advice of the Senate, after acquainting it with all the conditions to be met and obligations to be discharged, along with our own rights to be safeguarded."

President Harding wants "normalcy" in our foreign affairs, and he is set on restoring it in our domestic affairs. "We can render no effective service to humanity," he says, "until we prove anew our own capacity for coöperation in the coördination of powers contemplated in the Constitution, and no covenants which ignore our associations in the war can be made for the future."

That President Harding and Secretary Hughes, on the one hand, and the Senate of the United States, on the other, may be successful in their joint efforts, must be the hope of those who would see Europe restored and prosperous and the prestige of the United States rehabilitated.

JAMES BROWN SCOTT.

GERMAN REPARATIONS

Another critical stage has been passed in the long and tedious controversy regarding the German reparations due the allies for "damage done to their civilian populations and property" during the World War. Apparently wearied and almost worn out by the repeated disagreements and failures attending previous efforts to secure a settlement, the Allies, on May 5th of this year, finally presented to Germany the following ultimatum:

> The Allied Powers, taking note of the fact that despite the successive concessions made by the Allies since the signature of the Treaty of Versailles, and despite the warnings and sanctions agreed upon at Spa and Paris, as well as of the sanctions announced at London and since applied, the German Government is still in default in

fulfillment of the obligations incumbent upon it under the terms of the Treaty of Versailles as regards:

First, disarmament.

Second, the payment due, May 1, 1921, under Article 235 of the treaty, which the Reparations Commission already has called upon it to make at this date.

Third, the trial of war criminals as further provided for by the Allied notes of February 13 and May 7, 1920, and

Fourth, certain other important respects, notably those which arise under Articles 264 to 267, 269, 273, 321, 322 and 327 of the treaty, decide:

A—To proceed from today with all necessary preliminary measures for the occupation of the Ruhr valley by Allied troops on the Rhine under the conditions laid down.

B—In accordance with Article 235 of the Versailles Treaty, to invite the Allied Reparations Commission to notify the German Government without delay of the time and methods for the discharge by Germany of her debt, and to announce its decision on this point to the German Government by May 6, at the latest.

C—To summon the German Government to declare categorically within six days after receiving the above decision its determination: (1) To execute without reservation or condition its obligations as defined by the Reparations Commission; (2) To accept and realize without reservation or condition in regard to its obligations the guarantees prescribed by the Reparations Commission; (3) To execute without reservation or delay measures concerning military, naval and aërial disarmament of which Germany was notified by the Allied nations in their note of January 29; those measures in the execution of which they have so far failed to comply with are to be completed immediately and the remainder on a date still to be fixed; (4) To proceed without reservation or delay to the trial of war criminals, and also with other parts of the Versailles Treaty which have not as yet been fulfilled.

D—To proceed on May 12 with the occupation of the Ruhr valley, and to undertake all other military and naval measures, should the German Government fail to comply with the foregoing conditions. This occupation will last as long as Germany continues her failure to fulfill the conditions laid down.

On the night of the same date (May 5, 1921), the Reparation Commission handed to the German War Burdens Commission the following Protocol:

Germany will perform in the manner laid down in this schedule her obligations to pay the total fixed in accordance with Articles 231, 232 and 233 of the Treaty of Versailles, 132,000,000,000 gold marks, less: (a) the amount already paid on account of reparations; (b) sums which may, from time to time, be credited to Germany in respect of state properties in ceded territory, etc.; (c) any sums received from other enemy or former enemy Powers, in respect to which the commission may decide credits should be given to Germany, plus the amount of the Belgian debt to the Allies, the amounts of these reductions to be determined later by the commission.

The Protocol then provides for the issue of bonds secured by the entire assets of the German Empire and the German States. The first series of bonds for the amount of 12,000,000,000 gold marks, says the Protocol, shall be delivered by July 1, 1921, but the interest of five per cent, plus one per cent for a sinking fund, shall be payable half-yearly from May 1st. The second series for 38,000,000,000 gold marks shall be issued on November 1, 1921. The third series for 82,000,000,000 gold marks shall be

delivered not later than November 1st to the Reparation Commission without coupons attached, and will be issued by the Commission at its discretion when it is satisfied that the payments undertaken by Germany in pursuance of this agreement are sufficient to provide for the payment of interest and the sinking fund on such bonds. The sinking fund shall be used for redemption of the bonds by annual drawings at par.

The bonds will be German Government bearer bonds, in such denomination as the Reparation Commission shall prescribe for the purpose of rendering them marketable, and shall be free from German taxes and charges of every description. Until the redemption of the bonds, Germany will be required to pay annually 2,000,000,000 gold marks and 26 per cent of the value of her exports as from May 1st, or, alternatively, an equivalent amount as fixed in accordance with any other index proposed by Germany and accepted by the Reparation Commission.

"It is provided," continues the Protocol, "that when Germany shall have discharged all her obligations under this schedule, other than her liability with respect to outstanding bonds, the amount payable each year under this paragraph shall be reduced to the amount required in that year to meet the interest and sinking fund on the bonds outstanding."

Germany is required to pay within twenty-five days 1,000,000,000 marks in gold, approved foreign bills or drafts at three months on the German treasury, indorsed by approved German banks in London, Paris, New York, or other place designated by the Reparation Commission. These payments will be treated as the first two quarterly instalments of the amounts due on Germany's liability to pay 2,000,000,000 marks yearly and 26 per cent of the amount of her exports.

Within twenty days the Reparation Commission shall establish a subcommission to be called the Committee on Guarantees, to consist of representatives of the Allied Powers, including a representative of the United States, in the event of that government desiring to make an appointment. This committee shall comprise not more than three representatives from the nationals of other Powers when it shall appear that a sufficient portion of the bonds are held by nationals of such Powers as to justify their representation. This committee will supervise the application to the bonds service of the funds assigned as security for payment, such as German maritime and land customs duties, and in particular all import and export duties, the levy of 26 per cent on the German exports and the proceeds of such direct and indirect taxes or any other funds as may be proposed by the German Government and accepted by the committee in substitution therefor. The twenty-six per cent levy on exports, less one per cent for sinking fund, shall be paid by the German Government to the exporter. It should be particularly noted that the Committee on Guarantees is not authorized to interfere with the German administration.

Germany, it is stipulated, shall, subject to the prior approval of the

Commission, provide such material and labor as any Allied Power may require toward the restoration of the devastated areas of that Power, or to enable any Allied Power to proceed with the restoration and development of its industrial and economic life. The value of such material and labor shall be determined by German and Allied valuators. The receipts from the fifty per cent levy on German exports, decided upon at the previous London conference, will be credited to Germany under the present arrangement. Any surplus receipts from the interest and sinking fund payments and the export tax shall be applied, as the Commission thinks fit, to paying simple interest not exceeding 2½ per cent from May 1, 1921, to May 1, 1926, on the balance of the debt not covered by the bonds then issued. No interest on this balance shall be payable otherwise.[1]

In a valuable dispatch from Paris to the *New York Times*, dated May 7, 1921, Mr. Charles H. Grasty thus comments upon certain provisions contained in the above ultimatum and protocol:

> The ultimatum provides that there shall be a fixed payment of $500,000,000 per annum. This applies to Categories A, B, and C, with priority according to the letters. After the interest on Categories A and B, whatever is left goes to bonds of Category C.
>
> Taking last year as a basis, 26 per cent on exports which in dollars aggregated $1,250,000,000, there would be a yield of something more than $812,000,000. This would be disposed of by applying $750,000,000 to interest and sinking funds on $12,500,000,000 bonds of the first two categories, leaving a balance of $62,000,000. It will then be within the discretion of the Reparation Commission to decide what amount of C bonds should be issued with coupons attached in view of the $62,000,000 of surplus.
>
> Until this happens none of the $20,500,000,000 bonds of C Category will carry interest. That is a real safeguard against loading Germany with obligations she will find unfillable. The Reparation Commission considered that if Germany started with $33,000,000,000 of interest bearing debts the burden might be more than she could carry.
>
> The security for these obligations as shown in these ultimatum terms includes practically all Germany's income and resources.

The German Reichstag having yielded to the demand of the Allies by a vote of 221 to 171 and a new Coalition (L) Government having been formed, Germany finally accepted the Allied ultimatum without conditions or reservations on May 10th.

In view of the importance of the reparations issue as a factor in the continued "unsettlement" of Europe since the armistice, it may not be amiss to sketch the main stages in the history of this complicated controversy after the signing of the Treaty of Versailles on June 28, 1919. Inasmuch as the matter has been very fully discussed (if not altogether without partisan bias) by such authorities as Keynes and Baruch, we do not feel called upon to touch upon the differences and difficulties regarding reparations at the Paris Peace Conference. Suffice it to say that Articles 231-233 of the Treaty of Versailles state:

> The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the

[1] The above summary is based upon an Associated Press dispatch.

Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.

The Allied and Associated Governments recognize that the resources of Germany are not adequate, after taking into account permanent diminutions of such resources which will result from other provisions of the present treaty, to make complete reparation for all such loss and damage.

The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied and Associated Power against Germany by such aggression by land, by sea, and from the air, and in general all damage as defined in Annex I hereto. . . . .

The amount of the above damage for which compensation is to be made by Germany shall be determined by an Inter-Allied Commission, to be called the Reparation Commission, and constituted in the form and with the powers set further hereunder and in Annexes II to VII, inclusive, hereto.

This Commission shall consider the claims and give to the German Government a just opportunity to be heard.

The findings of the Commission as to the amount of damage defined as above shall be concluded and notified to the German Government on or before May 1, 1921, as representing the extent of that Government's obligations.

Ever since the acceptance of this treaty by Germany, the Allies have been engaged in protracted efforts to agree among themselves as to the terms to be imposed upon Germany. Informal discussions in the early part of 1920 resulted in the evolution of the "mobile" plan under which Germany was to pay "certain fixed annuities, and, in addition, variable annuities determined by the fluctuations of her prosperity (as measured by index-numbers based on railway returns, customs, receipts, and other factors) above a fixed datum line."[2]

At the Boulogne Conference held in the latter part of June, 1920, the index-number scheme was discarded and the expedient substituted of ensuring a full toll on Germany's increasing prosperity by fixing the indemnity impossibly high and giving power to the Reparation Commission to "postpone" (another way of writing "remit") such portions as might prove to be beyond her capacity. The Boulogne Conference was notable for the fact that the project there adopted was primarily the work of a French expert; that it provided for the extension of payments over forty-two years, whereas the treaty definitely stipulated for thirty; and that serious thought was for the first time given to the Financial Conference convened at Brussels by the League of Nations at the request of the Allies, at which it was hoped the foundations might be laid for an international loan to capitalize any annuities by that time agreed on between the Allies and Germany.

The actual outcome of Boulogne was a demand for annuities totalling 269 milliards spread over a period of forty-two years, the Reparation Commission, however, having power, as has been said, to make certain "postponements." It remained, as the treaty stipulated, to "give the German Government a just opportunity to be heard." The

[2] For this and the quotations following, see an article by H. Wilson Harris on "The Conference That Failed" in the *Contemporary Review* for April, 1921, which has served as the main source of information for this part of our editorial. *Cf.* "The Breakdown of the London Conference" in the *Fortnightly Review* for April, 1921.

opportunity was fixed for Spa a month later, and the League of Nations, intently observing the evolutions of the Supreme Council, postponed its Financial Conference accordingly.

At the Spa Conference (July 5–16, 1920), the Germans participated in these discussions for the first time. Their main proposals are thus summarized by Mr. Harris:

> The payment of minimum annuities on a thirty-year basis.
> Germany's creditors to share in any future improvement in her economic condition.
> Maximum total to be fixed.
> All claims against Germany to be consolidated into a single demand.
> Germany to contribute in labor and material to reconstruction of devastated areas.

It appears that these proposals were never discussed, owing to the coal and disarmament crises which arose at this time. The Geneva Conference, at which the subject was to have been discussed, was never held.

It was not until the meeting of the Brussels Conference in December, 1920, that the discussions on reparations were resumed.

According to Mr. Harris,[3]

> The Brussels conversations were more hopeful than any of their predecessors. The impossibility of measuring Germany's future capacity, and arriving there and then at a scheme of payments running a generation ahead, was frankly recognized, and a provisional settlement formulated under which Germany should at once engage to pay annuities of three milliards for the five years, 1921-1926, leaving the permanent settlement to be worked out more at leisure in the course of that period.
>
> But where the experts were on the point of agreeing the politicians incontinently intervened. The Supreme Council was to meet in Paris in January to discuss, primarily, the disarmament of Germany. By some process which even now remains obscure Reparations wormed its way on to the agenda, and quickly thrust itself into the forefront. If it was thought, as it undoubtedly was in some quarters, that the Brussels discussions had gone far enough to enable the Heads of States to endorse an agreement that the experts had virtually reached, there was much to be said for the procedure. In actual fact, the first thing the Supreme Council did was to throw out of window the basic principle of the Brussels concordat, that of a preliminary and provisional settlement.
>
> At Paris in 1921, as at Paris in 1919, politicians came together to talk finance and talked politics instead. If M. Briand went out of office in France, M. Poincare or M. Tardieu might come in. Moreover, there was in the Brussels plan no immediate promise of ready money, and no total of hundreds of milliards to dazzle the eyes of the newspaper readers of the boulevard cafés. The Council turned thumbs up, and the Brussels plan vanished.
>
> And what came instead? What came instead, after a gulf portending disaster between British and French had been bridged by the joint effort of Italians and Belgians, was the now notorious formula, for which the politicians rather than the experts claim pride of authorship, under which the Germans were called on to pay over forty-two years (Mr. Lloyd George was for keeping to the thirty of the treaty, but M. Briand held him to the Boulogne agreement on that point) annuities totalling 226 milliards, together with the equivalent in value of 12 per cent. of German exports, an addition

[3] *Op. cit.*

which brought the total fully up to the 269 milliards of Boulogne. It appears to have been implied, though it was never clearly stated, that the Paris demands referred solely to the future, no credit being given to Germany for the heavy payments in kind (put by her own experts at 20 milliards and by the Allies at less than half that) she had made since the Armistice.

So much for the Paris Conference which met in the latter part of January, 1921.

We now come to the "Conference that failed"—the London Conference of the first week of March, 1921. During the month preceding the meeting of this conference, press campaigns were carried on in both France and Germany; and in Germany there were held a series of public meetings, one of them at least addressed by Dr. Simons, the German Foreign Minister, himself, in which the German people were exhorted to "stand firm" and resist exorbitant demands. The natural consequences followed. An atmosphere was created that was highly unfavorable to a moderate and critical discussion of the German counter-proposals had they even been reasonable and adequate, which they were not. The German offer was of course rejected, the rejection being accompanied by an ultimatum. This was followed by the application of "sanctions" in the form of the military occupation of the Rhenish cities of Düsseldorf, Ruhrort and Duisburg early in March.

Along with the imposition of the sanctions went a formal demand by the Reparation Commission for the payment of the balance of the amount due by May 1st under Article 235 of the Treaty of Versailles. This article requires Germany to pay "in such installments and in such manner (whether in commodities, ships, securities, or otherwise) as the Reparation Commission may fix, during 1919, 1920, and the first four months of 1921, the equivalent of 20,000,000,000 gold marks." Germany claimed that she had already delivered more than the equivalent of this amount, whereas the Allies insisted that there was still a balance due of about $3,000,000,000. The Germans also refused to pay 1,000,000,000 gold marks demanded on a certain date in March by the Reparation Commission.

Further action appears to have been delayed by the result of the Silesian plebiscite, the menace of communistic outbreaks in Germany, and perhaps, also, by labor conditions in Great Britain. Various counter-proposals were put forward in Germany, including one to rebuild the ruined area in France. She even appealed to the United States to act as a sort of an umpire or arbitrator; but while our Government did not refuse its good offices to the extent of transmitting the German counter-proposals to the Allies, Germany was advised by our State Department that they were unacceptable and she was urged to submit "clear, definite, and adequate proposals which would in all respects meet her just obligations." The receipt of the Hughes note containing this advice was immediately followed by the fall of the German Cabinet, and the subsequent

unconditional acceptance of the Allied ultimatum on May 10th (see first part of this editorial).

This acceptance by Germany should not by any means be regarded as a settlement of the reparations question. It merely marks a breathing space or stage in what promises to be a long, tedious and complicated controversy.

AMOS S. HERSHEY.

GEORGE FRANCIS HAGERUP

The death of George Francis Hagerup on February 8, 1921, in the sixty-ninth year of his age, was unexpected by his many friends throughout the world. He had been very active at the Assembly of the League of Nations at Geneva, less than two months before. Many in America were looking forward to his coming to this country in the near future. His coming was anticipated in 1914 when the outbreak of the war not merely prevented but placed new and heavy duties upon him in the service of his own state.

At the time of his death he was Envoy Extraordinary and Minister Plenipotentiary from Norway to Sweden and to Belgium. He had also occupied with distinction other important diplomatic posts.

His early education took Mr. Hagerup to the German and French universities. In 1879 he became a lecturer and six years later professor of law in the University of Christiania. He became Minister of Justice in 1893 and in 1895 became Premier, retaining the office for three years. Five years later when the relations between Norway and Sweden were strained, just before the dissolution of the Union, he was again called to head the Cabinet.

He was a member of the Hague Court of Arbitration, and delegate plenipotentiary from Norway to the Second Hague Conference in 1907.

Mr. Hagerup wrote on many legal topics both in international and in private law, showing particular interest in procedure and in penal law.

He always took an active interest in the Institute of International Law, of which he was made a member in 1898 and of which he was President in 1912, when the session of the Institute was held at Christiania. He was also a member of other learned societies.

Mr. Hagerup was the first member of the Norwegian delegation at the League of Nations Assembly in 1920, and took an active part in its deliberations as well as in the work of the committees. He was a member of the Committee on Technical Organization, and of the Committee on the Permanent Court. He was Chairman of the Sub-Committee of Jurists. He had also served as a member of the Committee of Jurisconsults which had previously drawn up the plan for the establishment of the Permanent

Court of International Justice for which provision was made in Article 14 of the Covenant of the League of Nations.

His life was one of continued service to his state, but in the midst of all these important duties he found time to devote to his many friends and to further the broadest international policies looking to the well-being of the states of the world and of humanity. He recognized that much remained to be done, but in full confidence as to the ultimate outcome, he adopted as his own the words of Mirabeau: "Le droit deviendra un jour le souverain du monde."

GEORGE GRAFTON WILSON

THE MANDATE OVER YAP

The Island of Yap is situated in the Pacific Ocean and is one of the Caroline group. Its southern extremity is in latitude 9° 25′ north, longitude 138° 1′ east. Its shape is elongated with many projections and considerable bays, and at least one extensive harbor reaching some miles inland. Its area is 79 square miles. Its population in 1902 was 7,500, but stated in 1920 to be 7,155. It was among the islands sold by Spain to Germany by treaty of February 12, 1899, and which passed to the latter Power on October 1, 1899, for the payment of £840,000. The Germans made it the seat of their administration of the Western Caroline Islands, the Pelew Islands and the Marianne Islands. The chief export is copra, which, it may be well to say, is the dried kernel of the cocoanut broken up for export. It is north of the great island of New Guinea, which has over half a million people dwelling on it and which belongs to Holland and to Great Britain. It is almost directly east of the large southern island of the Philippines,—Mindanao. It is vastly more remote from Japan than from the Philippines.

The above facts, it is hoped, are not without their importance, but the world-wide interest which centers in this island is due to the fact that the cable lines connecting San Francisco, Shanghai, New Guinea and the East Indian Islands cross at that point, which is, therefore, the crux of Pacific cable communication. The two German cable lines connecting New York with Germany were cut during the war, and diverted respectively by France to Brest and by Great Britain to Halifax.

At the Congress on Communications, called in Washington in 1920, mainly to determine the disposition of the cables taken from Germany during the war, the United States insisted that the two above Atlantic cables should be returned to the possession of this country, and that the Far East line crossing the Pacific, by way of Yap, should be internationalized.

A serious controversy arose and no final conclusions were reached, and the congress has, in the main, failed of its purpose. A temporary arrange-

ment was completed for joint operation of the cables pending a final settlement. The discussion rapidly broadened into one as to the power of the Supreme Council of the Allied and Associated Powers, which were victors in the World War, or the League of Nations, to dispose of and allocate the territory and rights captured from the enemy, without the concurrence and consent of one chief participant, namely, the United States.

In the Congress on Communications the delegates of Great Britain and Italy were more favorable to the American claims, but France and Japan were unwilling to yield. The claim of Japan was that the Supreme Council had awarded to her a mandate over all islands, ceded by Germany in the Pacific, north of the equator; that Yap came within this description, which latter must be conceded. The contention of the American delegates was strongly supported by their government and by the Foreign Relations Committee of the Senate, on February 21st.

The matter having been called to his attention by the claims of Japan, put forward as mentioned at the Congress on Communications, the Secretary of State of the United States (Mr. Colby), submitted through our ambassador in Paris, to the Council of the League a note of protest which was presented on February 22d, a propitious date. In this the most fundamental contention was that the approval of the United States was essential to the validity of any determination respecting mandates by the Council.

The reply of the Council, March 1st, was conciliatory, calling attention to the complications arising from the fact that the United States had abstained from ratifying the Peace Treaty and had not taken her seat in the Council of the League of Nations. While inviting the United States to participate in two other forms of mandates, not yet finally disposed of, they said they had not the same liberty of action as to the "C" Mandate, which covered the German possessions in the Pacific; that this mandate was "defined by the Council at its meeting in Geneva on December 17, 1920." They reminded the Secretary of State that "the allocation of all the mandated territories is a function of the Supreme Council and not of the Council of the League;" that any misunderstanding, therefore, was between the Allied Powers and not between the United States and the League; that the note had been, therefore, forwarded to the Governments of France, Great Britain, Italy and Japan.

On February 28, 1921, Lord Curzon, for Great Britain, transmitted to our Department of State an able and elaborate note discussing the mandate in Mesopotamia at length, but not dealing with the question as to mandates in the Pacific Islands in particular.

To anticipate a little, we must know that on April 14, 1921, the Department of State of the United States issued a confidential statement to the press for publication in the afternoon newspapers of April 18th,

containing the correspondence of the United States and Japan as to mandates with particular reference to the Island of Yap. It began November 9, 1920, by a telegram to our Chargé at Tokyo, saying the question had arisen in the Communications Conference as to the disposition of Yap; that it was the clear understanding of this government that the Supreme Council at the request of President Wilson reserved for future consideration the final disposition of the Island of Yap, in the hope that it might be placed under international control and thus rendered available as an international cable station. The same was communicated to the Minister of Foreign Affairs for Japan on November 12, 1920, who on November 19th replied that the definite understanding of the Japanese Government was that the Supreme Council came to a final decision placing the whole of the German islands north of the equator under the mandate of Japan with no reservation as to Yap; that, therefore, Japan would not be able to consent to any modification which would exclude Yap "from the territory committed to its charge."

The Acting Secretary of State of the United States on December 6th forwarded to our Chargé at Tokyo a telegram giving the history of the reservations which may be epitomized thus:

On April 24, 1919, at a meeting of President Wilson and Messrs. Lloyd George and Clemenceau, President Wilson reported that he had that morning reminded Baron Makino and Count Chinda that it had been understood Japan was to have a mandate for the islands in the North Pacific, although he had made a reserve as to Yap, which he considered should be internationalized. At a meeting of the Foreign Ministers on April 13, 1919, Mr. Lansing had said that he would like, on a future occasion, to discuss whether in the interests of cable communications it would not be desirable that Yap be internationalized and administered by an international commission in control of cable lines, and that he raised the question to give warning that the question was in his mind and he would propose it for discussion later, and that Yap be considered as a special case. Baron Makino replied that the status of Yap should be decided before the question of cables, and Mr. Balfour thought the question of cables could not be deferred but must be settled in time for the treaty with Germany, and that Germany could be required to give up all title to the island and its status thereafter discussed among the Allies.

On May 1st, at a meeting in Mr. Pichon's room, President Wilson said that, as the cable lines across the Pacific passed through the Island of Yap, which thus became a general distributing center for the lines of communication for the North Pacific, Yap should not pass into the hands of one Power. On May 6th, in the meeting where mandates in the Pacific were discussed, Mr. Lloyd George expressed his understanding that Japan should receive *certain islands* north of the equator. According to the record, President Wilson consented in principle to this, with an explana-

tory statement that as to mandates the "open door" would have to be applied and that there must be equal opportunities for the trade and commerce of other members of the league. To quote the American note: "The Island of Yap, having been previously cited as a special case for particular future consideration, was not intended to be included among the 'certain islands' designated as available to Japan under mandate. This seems obvious, as Yap appears to have been the only island north of the equator in regard to the disposition of which there had existed any difference of opinion. There is no indication in the minutes of any further discussion with regard to this island."

There is an appendix to the minutes of the meeting of May 7th purporting obviously to be a codification of the agreement reached on the 6th as to the North Pacific islands. This is understood to be the basis of the claim of Japan. This does not expressly include all the islands in this category, though the word "certain" is omitted; but the Acting Secretary of State held that the erroneous publication of such a decision, of which this government was not aware, would not validate it and he stated that the President recollects no proposal at this meeting to change the decision of the 6th, and he agreed to no change. He understood it was agreed that Yap had been excluded and reserved for future determination. The American note stated further that on August 19, 1919, the President, before the Senate Committee on Foreign Relations said that he had made the point that the control of Yap should be reserved for the general conference to be held on ownership and operation of cables. These statements were given wide publicity but no comment was received from any nation holding contrary opinions.

The draft mandate covering the German islands in the North Pacific submitted December 24, 1919, provided, in case of dispute as to whether any particular island is or is not covered by the mandate that it should be submitted to the decision of the Council of the League, which should be final. This draft was objected to wholly on other grounds by Japan and so was rejected, which shows that no definite agreement as to all the islands in the general description was deemed to have been reached. The terms of the mandate had not been accepted by Japan or approved by the principal interested Powers and, therefore, the status must be one of temporary occupation, not signifying a vested interest.

Therefore, the Acting Secretary of State stated that the Government of the United States cannot agree that the Island of Yap was included in the decision of May 7th, or in any other agreement of the Supreme Council; that this island must form an indispensable part of international communications, and it is essential that its free and unhampered use for such purposes should not be limited or controlled by any one Power; that, even if under mandate to Japan, it is not conceivable that other Powers should not have free access to land and operate cables; that the

United States is disposed to grant such rights on any unfortified island essential therefor; and the hope was expressed that Japan would concur in the above views, and that, even if she receives the mandate for Yap, other Powers may have free access for cable purposes.

On February 6th, the Secretary for Foreign Affairs of Japan delivered to our Chargé at Tokyo a reply to the foregoing contentions, in substance as follows:

1. That no delegates from Japan were present at the meetings of the Supreme Council of April 21st, May 6th and May 7th, and, therefore, the Imperial Government had no means of ascertaining the utterances of the American delegates on those occasions; that, assuming they were as claimed, they were expressions of the opinion of Mr. Wilson or Mr. Lansing, and are unavailing unless accepted by the Council, and that views expressed by delegates prior to a decision are not necessarily reservations as to such decision; that the mandate as to Yap must be judged by the decision of May 7th, and previous utterances must be regarded as only preliminary conversations of no cogency to qualify or limit the decision. This view is enforced by the fact that the Imperial delegates expressed no agreement with these views and that Baron Makino distinctly disagreed with them at the meeting of the Foreign Ministers on April 30, 1919.

2. That instead of the specific designation of Yap in the assignment being required, sound interpretation would require that it be specifically excluded, if that were meant, as an exception must always be stated definitely; that, if a decision to exclude Yap, on which Japan had maintained a firm attitude, had been made on May 7th, when Japan was unrepresented, it would have been an act of bad faith which Japan could not conceive of; that Japan has notes from Great Britain and France, agreeing in this interpretation; that the words "certain islands" used by Mr. Lloyd George at the meeting of the Supreme Council on May 6th, do not tend to prove the exclusion of Yap since there are other islands in the South Pacific, north of the equator, which did not belong to Germany; that only that appearing on the face of the decisions should be accepted as authoritative in so grave a matter, and no unusual interpretation on vague grounds as to the interest of one party, not expressed in the text, should be accepted.

3. That the decision of May 7, 1919, was made public the following day, and if wrong, an immediate protest would be expected from the United States, but that none followed until over a year and a half later; that this rule does not apply to President Wilson's statements to a Senate committee, as the former is an international agreement, while the latter was a purely domestic affair.

4. That the language as to proceedings in case of dispute in the draft of the mandate submitted December 24, 1919, was solely to provide a means of settlement in case of dispute as to boundaries or the assignment of lands.

Like words were included in other draft mandates. The American contention would honeycomb all with exceptions or exclusions.

5. That whether or not Yap, though under mandate to Japan, should be freely opened to other Powers for the entry and operation of cables, is a matter exclusively for the decision of Japan. Moreover, Colonel House at the Commission on Mandates on July 8, 1919, opposed Viscount Chinda's claim that equal opportunities for trade and commerce should be guaranteed in territories belonging to Class C as in those of Class B. That, therefore, America cannot justly contend for the open door in the Class C territories, at least against Japan. Japan cannot consider herself bound in any way to recognize the rights of other governments in the matter of cables as indicated.

The new administration in the United States had come into office on March 4, 1921, and Mr. Hughes succeeded Mr. Colby as Secretary of State. On April 5th, Mr. Hughes telegraphed our Chargé at Tokyo a very cogent and vigorous reply to the Japanese note of February 26th, which reply was communicated to the Japanese Foreign Office on the same day.

Mr. Hughes states that the Government of the United States is unable to agree with the contention of the Japanese Government that to sustain its contention the United States must not only prove statements as claimed but also that the Supreme Council decided in favor of those views; that, on the other hand, the United States cannot be bound except by its own consent and that it has never assented to the mandate embracing Yap; that the United States Government deems the fundamental basis of its representation and the principles in its view determinative to be:

That the right to dispose of the overseas possessions of Germany was acquired only through the victory of the Allied and Associated Powers and that Japan does not deny the participation of the United States in that victory. It necessarily follows that the right accruing through the common victory is shared by the United States and there could be no valid or effective disposition of the overseas possessions of Germany without the assent of the United States, and as she had never vested either the Supreme Council or the League of Nations with any authority to bind her or to act on her behalf, there had been no opportunity for any decision which could affect her rights.

That the rights of the United States could be ceded or surrendered only by treaty, and no such treaty has been made; that failure to ratify the Treaty of Versailles does not detract from the rights of the United States which accrued prior thereto, and, moreover, that treaty expressly provides that Germany renounces in favor of the Principal Allied and Associated Powers all her rights and title over her oversea possessions, which confirms the position of the United States; that the draft convention for the mandate "proceeded in the same view" and purported to confer the mandate on Japan on behalf of the United States as one of the

grantors, thus recognizing the rights of the United States; that as the United States did not enter into this convention, or any treaty, it is unable to understand upon what grounds it was attempted to confer the mandate without its agreement, as the League had no authority to confer, and the Council none to confirm, the mandate in this respect, and it can have no efficiency as to the United States.

That the decision of May 7, 1919, cannot bind the United States, and the brief minutes of that meeting of the Supreme Council could not be construed without regard to other proceedings of the Council, and that these show the reservations as to Yap made by President Wilson and the details appear in his statement to the Department of State of March 3, 1921. This statement shows that his attention was first called, in October, 1920, to the contention that the decision of May 7, 1919, assigned to Japan a mandate for Yap. He restates his specific reservation as to the same and says he assumed these would be duly considered in the settlement of the cable question; that he never abandoned or modified his position as to Yap, and never agreed that the same be included in the mandate to Japan; that all agreements as to mandates were conditional on a subsequent agreement being reached as to the specific terms of the mandate and, further, on their being accepted by each of the Principal Allied and Associated Powers.

Mr. Hughes said further that, as the decision of May 7, 1919, did not, and in the nature of things could not, have finality, the United States saw no ground for the contention that it was its duty to make immediate protest and that omission thereof operated as a cession of its rights; that as soon as its attention was called to the claim of Japan (through the Conference on Communications of October, 1920), it at once informed Japan and the other Powers that it understood that Yap was not included in the mandate.

He expressed the regret of his government that, despite the above, there had been an attempt to pass upon drafts of mandates, including Yap, and to put the same in effect, in the name of the United States, without its assent; that it assumed such action was taken under a misapprehension and would be reconsidered; that the United States must insist that it has not lost its right or interest as it existed prior to action of the Supreme Council or the League of Nations, and that it cannot recognize the allocation of the island or the validity of the mandate to Japan; that the United States seeks no exclusive interest or any privileges not accorded to other Powers, including Japan; that relying on the sense of justice of the Government of Japan and of the other Allied and Associated Powers, it looks with confidence to a disposition conserving the just interests of all.

The reply of France of April 7, 1921, stated that she would "broach the examination thereof with the greatest desire to find a solution which will give every satisfaction to the United States" and that she had already

done all in her power to aid the American Government in the matter; that the Japanese Government was cognizant of the American reservations, and that there were elements for a resumption of conversations between the United States and Japan.

On April 29, 1921, the Italian Ambassador at Washington handed to the Department of State a note from his government, in which it expressed complete agreement with the text of the American note of April 5th, concerning the equality of right among mandatories in the exercise of their mandates. It, moreover, expressed her expectation that the Conference of Ambassadors in Paris "will pronounce itself with equanimity in such a way as to eliminate every possibility of disagreement and to conciliate all conflicting interests."

On May 23, 1921, it was announced that the Department of State had received a communication from Japan in which Japan is understood not to have taken a definitive position. The tone of the communication is announced as satisfactory and the officials are satisfied with the progress toward a solution of the question. The contents of the note, however, were not made public, but there is no impassé.

The matter of correction seems to rest with the Supreme Council which, through misapprehension, took the action in question.

The contention of Mr. Hughes is far-reaching and seems, if successful, to unsettle the right to all overseas possessions of Germany under mandates issued without the consent of the United States and, moreover, without consent by formal treaty. The argument which he advances, however, is very logical and apparently incontrovertible. "To the victors belong the spoils." If they have conquered by joint action, they own the spoils as joint owners. Even in case of private joint owners, it is submitted, there is no right of a majority to dispose of the interest of a minority. The rule that the majority can control has no application to the disposal of property so held. If Spain had ceded the Philippines to three nations, for instance, to the United States, Germany and Japan, two of these Powers could not have transferred the complete title to the islands and thus altered or diminished the right and title of the third. An agreement or solemn treaty by the United States and Germany transferring the islands to Great Britain would have been wholly ineffective as to the interest of Japan. That interest would have persisted unaltered and unaffected.

The rule spoken of applies much more widely and absolutely in all international transactions than in matters of private property. It is universally agreed, it is believed, that a sovereign nation by joining in an internatioal congress or conference in no way submits to be bound by a majority, unless she has so expressly agreed. Her sovereignty remains unimpaired and unsurrendered. Therefore, conventions adopted at the Hague Conferences required unanimous action to be controlling on all, and nations refusing to concur were acknowledged not to be bound. Nu-

merous examples of such refusals will occur to any student of those conferences. Professor Oppenheim in his great work on *International Law,* in discussing the procedure of international congresses and conferences, says:[1] "The motion must be carried unanimously to consummate the task of the congress, *for the vote of the majority has no power whatever in regard to the dissenting parties.*" And Professor Hershey[2] lays down the rule thus: "To give full legal validity to a vote or resolution, practical unanimity is necessary, though the majority may consider the motion binding upon its members."

The Supreme Council, which is in the nature of an international conference, plainly cannot, by a majority vote, deprive any nation even if there represented, of rights or territory unless that nation acquiesce.

The Japanese argument must be deemed inconclusive, inasmuch as it assumes that the United States must show that the exceptions and reservations as to Yap interposed by the representatives of the United States were ratified and adopted by the Supreme Council or the Council of the League. As the rights of the United States in the conquered territory were derived from their association in the victory, and not conferred by the Supreme Council or by the League or its Council, they could be subjected to the control or modification of those bodies only by appropriate action on the part of the United States itself, and none such ensued. No power to cede territory to a foreign nation is believed to be vested in any branch of the Government of the United States except in the treaty-making power. That power involves the action of the President and the concurring action of two-thirds of the Senate.

That acquiescence for a length of years and conduct inconsistent with ownership may be evidence against a nation, as against an individual, tending to raise an equitable presumption of transfer or loss of title, may be admitted. But there has been no such lapse of time or laches in the present matter. All the transactions are recent. Not even the time which by municipal law outlaws a simple account, has elapsed, much less that which applies to landed property.

It is believed that, in the interest of all nations, the internationalization of the cable rights on the island will be consummated by amicable adjustment. This disposition invades no rights, aggrandizes no one Power, and safeguards all. It must, therefore, meet the grateful commendation of the vast majority of men and nations. No act on the part of Japan could more strengthen and emphasize her entente with the other great Powers than her acquiescence in this readjustment for the common good.

CHARLES NOBLE GREGORY.

[1] Vol. I, p. 512.

[2] Essentials of International Public Law, p. 309.

THE RELINQUISHMENT OF EXTRATERRITORIAL JURISDICTION IN SIAM

On December 16, 1920, there was signed on behalf of the United States and Siam, a treaty revising the conventions theretofore existing between the two countries, as well as a protocol attached to and made a part of the treaty. In April, 1921, the Senate advised and consented to ratification. On May 6th, the President ratified the treaty. In many respects the annexed protocol embraces the most important and distinctive portion of the arrangement. Doubtless in Siamese opinion it is of vast significance; for it marks a definite achievement in the effort long in the making, to free Siam from the obligation to permit the exercise of extraterritorial jurisdiction by American authorities in its territory. This accomplishment has been in part the result of the protracted and unremitting labors of three distinguished Americans—Strobel, Westengard, and James—who in turn, for a period covering some twenty-five years, have striven successfully to place the institutions and judicial system of Siam on a plane such as to command the full respect of the outside world.[1]

Article I of the protocol announces that the system of jurisdiction established in Siam for citizens of the United States, and the "privileges, exemptions, and immunities" now enjoyed by them as a part of or appurtenant to that system "shall absolutely cease and determine on the date of the exchange of ratifications," and that thereafter all citizens of the United States and persons, corporations, companies, and associations entitled to its protection in Siam shall be subject to the jurisdiction of the Siamese courts. Article II sets forth, however, a condition subsequent, which for the time being, modifies or restricts the full operation of the foregoing provisions. It is there declared that until the promulgation and putting into force of all the Siamese codes, namely, the Penal Code, the Civil and Commercial Codes, the Codes of Procedure, and the Law for Organization of Courts, "and for a period of five years thereafter, but no longer," American diplomatic and consular officials in Siam, may, whenever they deem it proper to do so in the interest of justice, and by means of written requisitions addressed to the judges of courts in which such cases are pending in any Siamese court except the Supreme or Dika Court, demand the transfer of the particular case to themselves, in which an American citizen or a person, corporation, company, or association entitled to the protection of the United States is defendant or accused. Upon the transfer of a case to American authority for adjudication, the Siamese jurisdiction is to cease; and the case so evoked is to be disposed of by the diplomatic or consular official in accordance with the requirements of the appropriate laws of the United States. There is, however,

[1] It should be borne in mind that the indebtedness of Siam to foreign counselors and jurists is not confined to those of American nationality. It is understood that English lawyers have rendered vast aid in the task confronting that country.

an important limitation in this regard. With respect to all matters coming within the scope of codes or laws of the Kingdom of Siam regularly promulgated and in force, of which the texts have been communicated to the American Legation in Bangkok, it is declared that the rights and liabilities of the parties shall be determined by Siamese law. That law is obviously to be applied by the American tribunal. For the purpose of trying appropriate cases and of executing judgments to be rendered therein, it is announced that the jurisdiction of the American diplomatic and consular officials in Siam is continued. It is also declared that should the United States perceive, within a reasonable time after the promulgation of the codes above specified, any objection thereto, the Siamese Government will endeavor to meet such objections.

According to Article III, appeals by persons and entities entitled to American protection, from judgments of courts of first instance in cases to which they may be parties, shall be adjudged by the Court of Appeal at Bangkok; and an appeal on a question of law shall lie from that tribunal to the Supreme or Dika Court. Again, such persons or entities who are parties defendant or accused in any case arising in the provinces, are to be permitted to apply for a change of venue, and should the court consider such change desirable, it is provided that the trial shall take place either at Bangkok or before the judge in whose court the case would be tried at Bangkok.

In order to prevent difficulties arising in the transfer of jurisdiction, Article IV makes specific and ample provision. Thus all cases in which action shall be taken subsequent to the date of the exchange of ratifications of the treaty are to be entered and decided in the Siamese courts, regardless of whether the cause arose before or after that date. Again, all cases pending before American diplomatic and consular officials on that date are to take their usual course before such officials until final disposition, the American jurisdiction remaining in full force for that purpose. In connection with any such case or with cases evoked by American officials for transfer to themselves, it is declared that the Siamese authorities shall upon American diplomatic or consular request, lend their assistance to all matters pertaining to the case.

It remains to be seen whether, should the treaty and protocol come into force through an exchange of ratifications, American diplomatic or consular authorities in Siam will deem it necessary to assert the right to evoke cases and thereby effect their transfer. It is not improbable that pending the promulgation of the Siamese Codes, or within the five-year period thereafter, there may be no strong disposition to substitute American for Siamese courts. It must be emphasized that the protocol contemplates normally adjudications concerning American citizens before Siamese tribunals, and a transfer therefrom only under the conditions specified, and which may not in fact arise. More important, however, is

the definite agreement that upon the promulgation of all the Siamese codes specified in Article II, and after a definite period of time, Siam acquires fullest rights of jurisdiction over causes pertaining to Americans, and that the United States so agrees to an ultimate and complete relinquishment of extraterritorial jurisdiction.

The arrangement thus marks the recognition of a definite advance in the condition of Siam, and of one inconsistent with the long-continued maintenance of foreign courts on Siamese soil. It is gratifying that the United States should formally so reckon with these facts. Its policy in so doing is in harmony with the spirit manifested in one of its treaties with another oriental country, and evincing a readiness to aid and encourage the reform of the local judicial system with a view to bringing about the relinquishment of extraterritorial privileges. The effect of the present treaty and protocol upon the future contractual relations of Siam with other states is incalculable. The new arrangement must serve to inspire fresh negotiations contemplating equal concessions by European Powers. Upon China and certain other countries the influence of this new token of the progress of Siam, as well as of the coöperation of the United States, must be far-reaching. With President Harding's ratification of the compact, there is brought home to enlightened opinion in every land a fresh consciousness of the fact that the potentialities and aspirations of every country under every sun are unlimited, and normally, under fair guidance, may be productive of judicial institutions capable of meting out exact justice to resident aliens of any nationality, and, therefore, worthy of general respect.

CHARLES CHENEY HYDE.

THE TREATY BETWEEN COLOMBIA AND THE UNITED STATES

On April 20, 1921, the Senate of the United States advised and consented to the ratification of the treaty between Colombia and the United States, concluded on April 6, 1914. The treaty was signed on behalf of the United States by Thaddeus Austin Thomson, then Minister of the United States to Colombia, and by six plenipotentiaries on behalf of Colombia, the principal one being Francisco José Urrutia, then Minister of Foreign Affairs.

The purpose of this treaty was, as stated in its preamble, "to remove all the misunderstandings growing out of the political events in Panama in November, 1903; to restore the cordial friendship that formerly characterized the relations between the two countries, and also to define and regulate their rights and interests in respect of the interoceanic canal, which the Government of the United States is constructing across the Isthmus of Panama."

The purpose of the two countries has remained unchanged, and therefore the preamble of the original treaty was advised and consented to by the Senate, that body replacing "is constructing" by "has constructed," inasmuch as the Canal, then in progress, has since been completed and opened to the commerce of the world. To effectuate the purposes, the sum of $25,000,000 gold was to be paid by the United States to Colombia "within six months after the exchange of the ratifications." This clause disappears, but the money remains. In the amended treaty, it is all to be paid in Washington. The sum of $5,000,000 is to be paid within six months after ratification, and from the date of the first payment the balance, that is to say, the sum of $20,000,000, is to be paid in four equal installments of $5,000,000 each. In the original treaty the money was to be paid in gold. In the amended treaty, it is to be paid in dollars, but it is believed that there can be no objection on the part of Colombia to receive the $25,000,000 even though it should not be in gold. This obligation appears in the second article of the amended treaty instead of the third of the original, but it will be equally agreeable to Colombia to have it appear in an earlier than in a later article.

The purpose of the treaty, however, was not merely to remove "the misunderstandings" between Colombia and the United States "growing out of the political events in Panama in November, 1903," but also to remove, in so far as they could be removed, the misunderstandings between Colombia and Panama.

In the fourth article of the original treaty, Panama was to be recognized by Colombia as an independent nation and its boundaries defined. By the recognition of Panama as an independent nation, separate and distinct from Colombia, and the determination of the boundaries between the two, the two countries would be in a position to meet as equals and to arrange their business upon a footing of equality, as is the case with other nations. The United States, anxious to be helpful to each, agreed in the original fourth article and in consideration of this recognition on the part of Colombia, to take steps immediately after the exchange of ratifications to "obtain from the Government of Panama the despatch of a duly accredited agent to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship with a view to bring about both the establishment of regular diplomatic relations between Colombia and Panama and the adjustment of all questions of pecuniary liability as between the two countries, in accordance with recognized principles of law and precedents." This article is retained in the amended treaty without change, other than that its number is changed from four to three.

The second article of the original treaty, which becomes the first of the amended treaty, has a number of changes. The first is an addition which vests in the United States the title "entirely and absolutely" and "without any encumbrances or indemnities whatever" to the canal and

the Panama Railroad. The canal is the property of the United States according to the treaty with Panama of November 18, 1903. Colombia was not a party to this treaty, but this clause recognizes the right which the United States obtained to the canal from Panama, through whose territory it passes. In like manner the railway belongs to the United States and in this clause Colombia recognizes this ownership and removes any cloud from that title, as far as Colombia is concerned.

The balance of Article I, originally Article II, of the Colombian treaty, confers upon Colombia the right to use the canal for the transportation of its troops, materials of war, and ships of war, without paying charges to the United States; the right to transport the products of its soil and industry, as well as its mails, free of duty other than what the United States would pay under like conditions; the right to use the railway between Ancon and Cristobal or any other railway when the canal is interrupted and closed to traffic, upon a footing of equality with the United States; and, finally, the right to transport at actual cost, which shall not exceed one-half of the freight levied upon similar products of the United States, "coal, petroleum and sea salt, being the products of Colombia, for Colombian consumption, passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, and vice versa."

Certainly, these are valuable privileges. They are concessions of a very generous nature, and they are in addition to the lump sum of twenty-five million dollars which the United States undertakes to hand over to Colombia in pursuance of its purpose, "to remove all the misunderstandings growing out of the political events in Panama in November, 1903."

The purpose of the United States in so doing, is expressed in actions, not words, and "actions," they say, "speak louder than words." This, apparently, was the opinion of the Senate, which rejected Article I of the original treaty, conceived in the following language:

> The Government of the United States of America, wishing to put at rest all controversies and differences with the Republic of Colombia arising out of the events from which the present situation on the Isthmus of Panama resulted, expresses, in its own name and in the name of the people of the United States, sincere regret that anything should have occurred to interrupt or to mar the relations of cordial friendship that had so long subsisted between the two nations.
>
> The Government of the Republic of Colombia, in its own name and in the name of the Colombian people, accepts this declaration in the full assurance that every obstacle to the restoration of complete harmony between the two countries will thus disappear.

If this article had been inserted in the preamble, and had been followed by the material concessions stated in the first article of the revised treaty and the proffer of good offices to Colombia and Panama in the third, the treaty should, it is believed, have been ample, according to international usage, to restore friendly relations. The purpose expressed in the actual preamble, the material concessions, and the proffer of good offices, to which

are added twenty-five million dollars of American currency, would seem to constitute a very real desire to restore friendly relations.

Overdoing is perhaps as questionable as underdoing. As it is, there must have been very serious grounds for paying such a large sum to Colombia. What are these grounds? A reference to earlier treaties between Colombia and the United States and between Great Britain and the United States is necessary to a correct understanding of the international situation and the relation of the Isthmus of Panama to the United States.

The advantages had long been foreseen of a canal through the Isthmus of Panama, and it was only a question of time until the attempt should be made to cut the Isthmus and to unite the oceans—the Atlantic and the Pacific. The settlement of the northwestern boundary of the United States by the treaty of June 15, 1846, with Great Britain, and the acquisition of California through the Treaty of Guadalupe Hidalgo, concluded with Mexico on February 2, 1848, extended the United States across the entire continent from the Atlantic to the Pacific Ocean. The discovery of gold in California and the rush of adventurers to that State in 1849, across vast stretches of territory then uninhabited, amid great hardships and the loss of much time, turned attention to Panama and the project of securing a short passage from the east to the west through a canal.

Great Britain was likewise interested in such a project. Colombia, or, as it was then called, New Granada, was fearful that foreign Powers might seek to acquire the Isthmus, and for this reason Mr. Mallarino, its Minister of Foreign Affairs, applied in 1846 to the Government of the United States to enter into a treaty which should protect Colombia against the seizure of the Isthmus. He called attention to what he considered the undue encroachments by Great Britain in South America, and stated that if that country should acquire the Isthmus of Panama, "the empire of American commerce in its strictly useful or mercantile sense would fall into the hands of the only nation that the United States can consider as a badly disposed rival." It was, however, not solely the interests of the United States which he had in mind. He spoke for Colombia and the Spanish-American republics, of which his own country was one. Thus, he continued:

> It would be perfectly superfluous to mention the political consequences that would be entailed upon America. This dominion or ascendancy would be equally ruinous to the commerce of the United States and to the nationality of the Spanish-American republics, most direful for the causes of democracy in the New World, and a constant cause of disturbance of the public peace in this our continent.

He therefore proposed a treaty between the United States and Colombia which, in consideration of certain commercial concessions, would assume the obligation "of guaranteeing the legitimate and complete or integral possession of those portions of territory that the universal mercantile interests require to be free and open to all nations." And he likewise stated

that the commercial concessions should be the consideration for the obligation, as "otherwise New Granada would be obliged to grant the same privileges unconditionally to England."

As a result of this request, the treaty of December 12, 1846, was negotiated by Mr. Benjamin A. Bidlack, Chargé d'Affaires in Bogota, on behalf of the United States, and by Manoel Maria Mallarino, Secretary of State and Foreign Relations, on behalf of New Granada. In its 35th article, the treaty guaranteed to the United States that "the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States."

It will be recalled that the treaty had been concluded at the request of Colombia, in order to prevent any foreign Power from seizing the Isthmus. The protection of the United States was wanted, and therefore advantages and concessions were to be offered the United States as a consideration for the desired protection. Therefore, "to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages, and for the favors they have acquired by the 4th, 5th, and 6th articles of this treaty," the United States was to agree and did actually oblige itself in the treaty to "guarantee positively and efficaciously to New Granada by the present stipulation the perfect neutrality of the before-mentioned Isthmus with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists, and in consequence the United States also guarantee in the same manner the rights of sovereignty and property which New Granada has and possesses over the said territory."

It is evident from the origin of the treaty and from the express wording of the article in question that the guarantee was to inure to the benefit of the United States and to secure Colombia against the aggression of a foreign power. The neutrality would, however, be affected in case of a civil war, in which contingency the United States could intervene to prevent the interruption of transit across the Isthmus.

To obtain a right against Colombia was one thing; to obtain it against Great Britain was another. The relative positions of Great Britain and the United States at the time made it seem to American statesmen of that day the part of wisdom to share what they might not hope to acquire alone, and as a partner prevent exclusion from a great enterprise. Therefore, John M. Clayton, Secretary of State, on behalf of the United States, and Sir Henry Lytton Bulwer, British Minister to the United States, on behalf of Great Britain, concluded a treaty—the so-called Clayton-Bulwer Treaty—on April 19, 1850, by which those two countries agreed to facilitate the construction of a canal across Central America and "to extend their protection, by treaty stipulations, to any other practicable communications,

whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama."

Later, the United States desired not merely to be a partner in such a venture but to be the sole party. The Clayton-Bulwer Treaty stood in the way. After much negotiation Great Britain agreed to abrogate that treaty, leaving the United States free to take the initiative without the co-operation of Great Britain. The Clayton-Bulwer Treaty was therefore expressly abrogated by the treaty of November 18, 1901, commonly called the Hay-Pauncefote Treaty, owing to the fact that Secretary Hay negotiated it on behalf of the United States and Lord Pauncefote, Ambassador to the United States, negotiated it on behalf of Great Britain.

The way was now clear for the United States to build a canal. It finally decided against a canal through Nicaragua in favor of a canal through the Isthmus of Panama, if satisfactory arrangements could be made with Colombia. Colombia proposed such a treaty, and also the financial consideration for the use of its territory. Therefore, the so-called Hay-Herrán Treaty was concluded on behalf of the United States by Secretary of State Hay and by Tomás Herrán, on behalf of Colombia, on January 22, 1903. It authorized the United States to cut a canal across the Isthmus of Panama, then a part of Colombia, and it granted the United States for the period of one hundred years, subject to renewal by the United States as long as it might desire to do so, a zone from ocean to ocean through which the canal should run.

In consideration of this authorization and grant and other rights set forth in the treaty, the United States agreed to pay the sum of $10,000,000 in gold coin "after its approval according to the laws of the respective countries," and also an annual payment during the life of this convention of $250,000 in like coin beginning nine years after the date aforesaid.

The ratification of the treaty was advised and consented to by the Senate of the United States on March 17, 1903. It was submitted to the Congress of Colombia, but that body adjourned on October 31, 1903, without ratifying the treaty. The State of Panama resented the failure to approve the treaty to such an extent that a revolution broke out on November 2d. Forty-two marines from the *U. S. S. Nashville* were landed at Panama the next day, and again on the succeeding day, in order to protect American men, women and children. The United States apparently took no action other than to prevent the transportation of Colombian or Panaman troops across the Isthmus in order to keep that line of communication open in accordance with what it conceived to be its rights under the treaty of 1846 with Colombia.

In 1902 there had been a revolution in Panama and the United States acted in September of that year as it did in November of the ensuing year.

Thus, Commander McLean, commanding the *U. S. S. Cincinnati,* informed the commander of the Colombian forces and the commander of the insurgent forces—

> that the United States naval forces are guarding the railway trains and the line of transit across the Isthmus of Panama from sea to sea, and that no persons whatever will be allowed to obstruct, embarrass, or interfere in any manner with the trains or the route of transit. No armed men except forces of the United States will be allowed to come on or to use the line. All of this is without prejudice or any desire to interfere in domestic contentions of the Colombians.

The revolution of 1902 failed. The revolution of 1903 was successful. Panama's representative, Mr. Philippe Bunau-Varilla, appeared at Washington, asking recognition of Panama. This was accorded on November 13, and on November 18, 1903, he signed a treaty on behalf of the Republic of Panama, Secretary of State Hay signing on behalf of the United States. By this treaty, ratified by both parties, the United States obtained a right to build the canal through the territory recognized by Panama and the United States as belonging to the former as a sovereign state. On the same day France recognized the Republic of Panama, and within the course of the month it was recognized by China, Austria-Hungary and Germany.

Colombia complained of the action of the United States, and proposed to submit to arbitration at The Hague "the grievances" growing out of the political events in Panama in November, 1903. This proposal Secretary Hay refused in a note to the Colombian minister, dated January 5, 1904, on the ground that these "grievances" were of a "political nature such as nations of even the most advanced ideas as to international arbitration have not proposed to deal with by that process," and that "questions of foreign policy and of the recognition or non-recognition of foreign states are of a purely political nature and do not fall within the domain of judicial decision."

On a later occasion, Secretary of State Root replied on behalf of the United States, to the same contentions in a note to the Colombian Minister, dated February 10, 1906, in which he said:

> The real gravamen of your complaint is this espousal of the cause of Panama by the people of the United States. No arbitration could deal with the real rights and wrongs of the parties concerned unless it were to pass upon the question whether the cause thus espoused was just—whether the people of Panama were exercising their just rights in declaring and maintaining their independence of Colombian rule. We assert and maintain the affirmative upon that question. We assert that the ancient State of Panama, independent in its origin and by nature and history a separate political community, was confederated with the other States of Colombia upon terms which preserved and continued its separate sovereignty; that it never surrendered that sovereignty; that in the year 1885 the compact which bound it to the other States of Colombia was broken and terminated by Colombia, and the Isthmus was subjugated by force; that it was held under foreign domination to which it had never consented; and that it was justly entitled to assert its sovereignty and demand its independence

from a rule which was unlawful, oppressive, and tyrannical. We cannot ask the people of Panama to consent that this right of theirs, which is vital to their political existence, shall be submitted to the decision of any arbitrator. Nor are we willing to permit any arbitrator to determine the political policy of the United States in following its sense of right and justice by espousing the cause of this weak people against the stronger Government of Colombia, which had so long held them in unlawful subjection.

There is one other subject contained in your note which I cannot permit to pass without notice. You repeat the charge that the Government of the United States took a collusive part in fomenting or inciting the uprising upon the Isthmus of Panama which ultimately resulted in the revolution. I regret that you should see fit to thus renew an aspersion upon the honor and good faith of the United States in the face of the positive and final denial of the fact contained in Mr. Hay's letter of January 5, 1904. You must be well aware that the universally recognized limitations upon the subjects proper for arbitration forbid that the United States should submit such a question to arbitration. In view of your own recognition of this established limitation, I have been unable to discover any justification for the renewal of this unfounded assertion.

Both countries were anxious to find a way out, and, pursuant to a suggestion made to Secretary Root when he visited Colombia on his return from South America in 1906, Mr. Enrique Cortes, then Colombian Minister to Great Britain, was transferred to Washington in order to work out a settlement of the differences with Secretary Root. Their negotiations resulted in the so-called tripartite agreement, consisting of three treaties—the first between Panama and the United States, the second between Colombia and the United States, and a third between Colombia and Panama, dated January 9, 1909, to be ratified as one and the same instrument and only to go into effect when each of the three had been ratified by each of the three contracting parties.

According to the treaty with Colombia, Panama was to transfer to Colombia for a period of ten years the annuity of $250,000 to be paid by the United States to Panama. Colombia was to be allowed free transit over the canal and railroad for mails, troops, etc., and was to retain ownership of the fifty thousand shares of capital stock held by Colombia in the Panama Canal Company. In consideration of the ten annual payments, amounting in all to $2,500,000, and the concessions made to Colombia in the use of the canal and the railroad across the Isthmus, friendly relations were to be restored between the two countries; Colombia was to acknowledge the independence of Panama, and agree to a settlement of the boundaries between the two countries. The differences between Panama and the United States were either settled by the treaty or were to be by recourse to arbitration in certain contingencies.

The special concessions to Colombia contained in the treaty between that country and the United States were, through Secretary Root's practical foresight and diplomatic skill, agreed to in advance by Great Britain, which might perhaps have objected to some of them as inconsistent with the Hay-Pauncefote treaty of 1901.

These treaties were approved by the Senate of the United States and by the Republic of Panama. Unfortunately, the treaty between the United States and Colombia was rejected by the Congress of Colombia, to which it was submitted and the government overturned which had concluded and which advocated the treaty and the settlements of which it formed a part.

In President Taft's administration, Mr. James T. DuBois was sent as minister of the United States to Colombia. Very sympathetically and very deftly he established friendly relations with the members of the government to which he was accredited, and in a letter written on his return to Washington to Secretary of State Knox, dated September 30, 1912, he thus diagnosed the situation:

In investigating the causes of the rejection of the Root-Cortes treaty, I asked many prominent persons in various walks of Colombian life what were the serious objections to this treaty, and the replies were to this effect:

"Five years after President Roosevelt had taken Panama from us with rank injustice, your Government, still under his chief magistracy, offered us a paltry $2,500,000 if Colombia would recognize the independence of her revolted province, fix our frontier at a further loss of territory, open all our ports free to the refuge of vessels employed in the canal enterprise, and exempt them from anchorage or tonnage dues, renounce our rights to all of our contracts and concessions relating to the construction and operation of the canal or railroad across the Isthmus, release Panama from obligation for the payment of any part of our external debt, much of which was incurred in the interest of Panama, and enter into negotiations for the revision of the treaty of 1846, which five years before had been openly violated by the United States in their failure to help maintain the sovereignty over the rebellious province which they had solemnly guaranteed. The reply was to this, banishment of our minister who negotiated the treaty, and all South America applauded our attitude."

These are the sentiments that are universal in Colombia to-day, and they are increasing from year to year. Conversing discreetly with many persons in the Republic, I found no one free from the spell of the spirit of reproach and condemnation. I did find, however, a genuine desire among the people of all classes that the United States and Colombia should, at the earliest possible moment, reach a just and honorable settlement of this unfortunate dispute.

A great change has come to the Colombian mind within the past year. When I reached Bogota in the autumn of 1911, I found a universal demand for arbitration. When I left Bogota last July there was an open desire for direct negotiations, and it was the general belief that these should take place at the Colombian capital.

Secretary Knox conferred with President Taft, who agreed to the resumption of negotiations along the lines suggested by Mr. DuBois, as appears from the following letter, dated November 30, 1912:

THE WHITE HOUSE,
Washington, November 30, 1912.

My dear Mr. Secretary:

I have your letter of November 29, with reference to the settlement of the questions between this Government and Colombia. I have read the communication of Minister Dubois and your proposed instructions to him and the suggested treaty. The proposition consists in the United States submitting to arbitration the question whether, taking into consideration the stipulations of the treaty between the United States and

Panama, and the *status quo* of Panama, as thereby recognized, the Government of Colombia or the Government of the United States is the owner of the reversionary rights of the Panama Railway. If the arbitral tribunal shall find that this reversionary right is still owned by the Government of Colombia, then it shall be empowered to assess and award, and it shall assess and award, the amount of indemnity which shall be paid by the Government of the United States to the Government of Colombia for such right, and such sum so awarded shall be paid by the United States within one year from the date of such award.

Second. The purchase by the United States of the right to build a canal on the Atrato route for $10,000,000, the said sum of $10,000,000 to be paid to include also the lease in perpetuity to the Government of the United States of the island of Old Providence and the island of St. Andrews.

Third. The Government of the United States undertakes to act on behalf of the Government of Colombia to bring about an adjustment, by reference to an impartial tribunal of arbitration, or otherwise, of the pending question of the northwestern boundary of Colombia.

And, finally, the ratification (by Colombia) of the Root-Cortes treaty.

If I understand these four parts, it would involve the United States substantially in the payment of $10,000,000, in addition to its liability under the Root-Cortes treaty. While I think the sum stipulated to be paid is a large one, I believe the advantage of settling the questions is so great that I would not hesitate to recommend such a treaty to the Senate for its ratification.

Sincerely yours,

WILLIAM H. TAFT.

HON. P. C. KNOX,
Secretary of State.

The negotiations started by Mr. DuBois did not bear fruit during the tenure of his office. Time, however, was in favor of a settlement, and, on April 6, 1914, Mr. Thomson was able to conclude on behalf of the United States a treaty with the Colombian plenipotentiaries calculated in the opinion of the contracting parties "to remove all the misunderstandings growing out of the political events in Panama in November, 1903."

The ratification of this treaty was advised and consented to by the Senate on April 20, 1921. It is in the Department of State ready to be exchanged when Colombia shall likewise have approved the treaty and is willing to proceed to an exchange of ratifications.

That this may take place, at no distant date, must surely be the hope of those who wish to see the friendliest of relations exist between the United States of Colombia and the United States of America, and even of those who hesitate to approve the settlement, but who desire the friendliest of relations among the American republics. Rightly or wrongly, the misunderstandings growing out of political events in Panama in November, 1903, are not confined to Colombia. They have to a greater or less degree affected the relations of the republics of the western world. Whatever differences of opinion there may have been as to the propriety of the settlement, it is believed that there will be none as to its immediate and ultimate effect.

JAMES BROWN SCOTT.

SUPERIOR ORDERS AND WAR CRIMES

An Associated Press dispatch from Leipzig, Germany, dated June 4, 1921, announces the acquittal of Lieutenant Karl Neumann, charged with the sinking of the British hospital ship *Dover Castle* by a German submarine under his command. The trial by the German court at Leipzig of Neumann and a few other Germans charged with war crimes, took place as the result of correspondence between the Allies and Germany regarding the execution of the penalty clauses of the Treaty of Versailles (Articles 228 to 230, inclusive).

Lieutenant Neumann, it appears, was in command of a German submarine which sank the British hospital ship *Dover Castle*. At the trial it appears that Neumann admitted sinking the *Dover Castle* in clear weather, but pleaded that he was acting under instructions from the German Government, as the vessel was not keeping to a special channel designated by Germany. It was established to the satisfaction of the court that the submarine commander had acted clearly within the instructions given him by his superiors, and he was for that reason exonerated from criminality. It is reported that in announcing the acquittal of Neumann, the presiding judge stated that all civilized nations recognize the principle that a subordinate is covered by the orders of his superiors; that the accused had carried out his orders without in any way exceeding them, and that there was nothing to prove that he had been guilty of particular cruelty as alleged in the Allies' accusations. The presiding judge added that, in the opinion of the court, there was not the slightest doubt that Lieutenant Neumann's orders were justified.

This decision will no doubt be disappointing to those who expected that the penalty clauses of the Treaty of Versailles would result in at least partial retribution for the high crimes and misdemeanors against civilization and humanity committed by the German naval and land forces in the conduct of the war. These clauses were inserted in the treaty under great pressure from the populations in the belligerent countries who had been the chief sufferers from the barbarous conduct of the war. In fact, Mr. Lloyd George was returned to power in the parliamentary elections of 1918 upon a platform the principal plank of which was the punishment of those responsible for the war and for the crimes committed during the war. The infliction of police court sentences by a German court on a few subordinates in lieu of the condign punishment of the real culprits higher up offers little satisfaction to those who believed that the penalty clauses of the Treaty of Versailles were a step in the right direction in providing a sanction for that branch of international law dealing with the laws of war.

The acquittal of Lieutenant Neumann of an act clearly prohibited by international treaty and reprehensible to the elementary instincts of humanity, on the specific ground that he was not responsible because he

acted within orders of his Government makes it, of course, impossible to punish any of the submarine commanders who acted in accordance with the instructions of their government. The same principle will logically apply to the German officers who were guilty of the violations of the laws of land warfare and those who wantonly devastated Belgium and France and Serbia, and shamefully deported their populations, can doubtless establish that these acts of barbarism were committed by orders of those higher up.

But the failure to carry out the penalty clauses of the Treaty of Versailles, even in the small measure in which it has been attempted, is not to be attributed entirely to the German judges at Leipzig. It was only necessary for Lieutenant Neumann to turn to the rules of war issued by the British Government to justify his plea that he was not responsible because he acted under superior orders. The British Manual of Military Law, issued in 1914 and reprinted in 1917, after enumerating all the possible categories of war crimes, provides as follows in Article 443:

> Members of armed forces who commit such violations of the recognized rules of warfare as are ordered by their government or by their commander are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such order if they fall into his hands, but otherwise he may only resort to the other means of obtaining redress.

The foregoing article was substantially copied into the Rules of Land Warfare, approved by the General Staff of the United States Army and published on April 25, 1914, for the information and government of the armed land forces of the United States. Article 366 reads as follows:

> Individuals of the armed forces will not be punished for these offences in case they are committed under orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall.

These articles appear to contain a new and untried provision inserted in the war manuals for the first time in 1914.[1] The rule does not represent any decided weight of opinion outside of military circles. Among the writers on international law, Professor Oppenheim seems to be alone in defending it. In Section 253 of his work on *International Law* (1912), he says:

> Violations of rules regarding warfare are war crimes only when committed without an order of the belligerent government concerned. If members of the armed forces commit violations *by order* of their government, they are not war criminals and may

[1] See Bellot, "War Crimes," Papers read before the Grotius Society, Vol. II, p. 47, who states that the proviso occurs in no previous edition of the British Manual of Military Law. Neither is such a proviso found in Lieber's Instructions for the Government of Armies of the United States in the Field, which were supplanted by the present Rules of Land Warfare.

not be punished by the enemy; the latter may, however, resort to reprisals. In case members of forces commit violations ordered by their commanders, the members may not be punished, for the commanders are alone responsible, and the latter may, therefore, be punished as war criminals on their capture by the enemy.

The rule is vigorously assailed by Phillipson in his *International Law and the Great War* (1915), who replies:

It has been contended in some quarters that a combatant's acts, no matter how heinous, outrageous, and abominable, do not possess a criminal character if they are committed under orders from superior officers. But this argument carried to its logical conclusion would lead to ineptitude and absurdity; the successive shifting of responsibility would exculpate every one until we reached the ultimate cause—in the case of Germany let us say, for example, the Kaiser. Can it, then, be seriously held that several millions of men may act contrary to law established, and perpetrate horrors and atrocities, and that they should be considered entirely guiltless on the ground, that they carried out the admittedly illegitimate commands of their supreme authority? The safety and stability of a nation or of a family of nations are incompatible with such an exaggerated and preposterous notion of vicarious responsibility.

In further illustration of this conflict of opinion, reference may be made to the paper read by Commander Sir Graham Bower, late of the Royal Navy, before the Grotius Society of London, on May 27, 1915,[2] in which he denies that the submarine officers and crews captured by Great Britain can be punished for sinking merchant ships contrary to the laws of war and humanity, because the German Government accepted responsibility for their acts. The opposite view was maintained before the same Society on March 24, 1916, by Dr. Hugh H. L. Bellot, who demanded that not only the instigators but also the actual perpetrators of the more heinous offences against the usages of war be brought to trial. Dr. Bellot cited the treatment of Captain Fryatt, convicted of a war crime by a German court martial and executed as a war criminal on July 27, 1916, as a refutation of the German contention that obedience to superior orders renders immune the perpetrator of a war crime.[3]

Judicial opinion, in so far as it exists on the subject, also seems to be divided. The question of the responsibility of a military officer in damages for the capture of a vessel under an illegal order from the Navy Department during the limited hostilities between France and the United States in 1799, came up for decision by the Supreme Court of the United States in 1804, in the case of the *Flying Fish* (2 Cranch 170), and Chief Justice Marshall, after weighing carefully the principle which should govern this

[2] "The Laws of War; Prisoners of War and Reprisals," Papers read before the Grotius Society, Vol. I, p. 23.

[3] *Ibid.*, Vol. II, pp. 54-55. For the trial of Captain Fryatt, see the editorial by J. B. Scott in this JOURNAL, Oct., 1916 (Vol. 10), p. 865.

For French practice during the war, and opinion on the subject, see J. W. Garner, "Punishment of offenders against the laws and customs of war," this JOURNAL, Jan., 1920 (Vol. 14), p. 70 at p. 83 *et seq.*

class of cases, followed the common law rule that an officer who commits an unlawful act pursuant to an illegal order is not protected by such an order from personal responsibility. The Chief Justice said:

I confess, the first bias of my mind was very strong in favor of the opinion, that though the instructions of the executive could not give a right, they might yet excuse from damages. I was much inclined to think that a distinction ought to be taken between acts of civil and those of military officers; and between proceedings within the body of the country and those on the high seas. That implicit obedience which military men usually pay to the orders of their superiors, which, indeed, is indispensably necessary to every military system, appeared to me strongly to imply the principle, that those orders, if not to perform a prohibited act, ought to justify the person whose general duty it is to obey them, and who is placed by the laws of his country in a situation which, in general, requires that he should obey them. I was strongly inclined to think that where, in consequence of orders from the legitimate authority, a vessel is seized, with pure intention, the claim of the injured party for damages would be against that government from which the orders proceeded, and would be a proper subject for negotiation. But I have been convinced that I was mistaken, and I have receded from this first opinion. I acquiesce in that of my brethren, which is that the instructions cannot change the nature of the transaction, nor legalize an act which, without those instructions, would have been a plain trespass.

A contrary view was later taken by Judge Story, speaking for the same court, in a case which involved the responsibility of a soldier who disobeyed a valid order on the ground that he regarded it as illegal. In Martin *v.* Mott, 1827 (12 Wheaton 28), Judge Story held that,

The service is a military service, and the command, of a military nature; and in such cases, every delay, and every obstacle to an efficient and immediate compliance, necessarily tend to jeopardize the public interests. While subordinate officers or soldiers are pausing to consider whether they ought to obey, or are scrupulously weighing the evidence of the facts upon which the commander-in-chief exercises the right to demand their services, the hostile enterprise may be accomplished, without the means of resistance.

The subject is discussed by Dicey in connection with the suppression of riots and rebellions. He concludes that the matter is one which has never been absolutely decided, but quotes with approval the following passage from Mr. Justice Stephens' *History of Criminal Law of England*, pp. 205-206, as nearly correct a statement of the rule as the authorities make it possible to provide:

The doctrine that a soldier is bound under all circumstances whatever to obey his superior officer would be fatal to military discipline itself, for it would justify the private in shooting the colonel by the orders of the captain, or in deserting to the enemy on the field of battle on the order of his immediate superior. I think it is not less monstrous to suppose that superior orders would justify a soldier in the massacre of unoffending civilians in time of peace, or in the exercise of inhuman cruelties, such as the slaughter of women and children, during a rebellion. The only line that presents itself to my mind is that a soldier should be protected by orders for which he might reasonably believe his officer to have good grounds. The inconvenience of being subject to two jurisdictions, the sympathies of which are not unlikely to be opposed

to each other, is an inevitable consequence of the double necessity of preserving on the one hand the supremacy of the law, and on the other the discipline of the army.[4]

Birkhimer states that while such a rule may sometimes appear to be unjust, "it is based on public policy and flows from the consideration that society should be protected from the evil-doer, who may not be permitted to evade the consequences of his unlawful acts by pleading the orders of anyone, for no one has a right either to set the laws at defiance or authorize another to do so. Still," he says, "as regards members of the military profession, the workings of the rule are liable to be so harsh that judges are moved sometimes not only to temper justice with great mercy, but, so far as practicable, to transfer the responsibility to the officer who issued the illegal order." "No wonder," he continues, "that courts, when they pass judgment in such cases, yield a willing ear to the promptings of humanity, and place, so far as possible, responsibility for violations of the law upon superiors who initiate them, rather than upon subordinates whose actions, in carrying into execution the orders of those whom the law has placed over them, are wholly involuntary."[5]

The same author thereupon draws the following distinction between the responsibility of superiors and subordinates:

A subordinate stands in a different position from the superior when he obeys, and may be absolved from liability for executing an order which it was criminal to give. The question is, Had accused reasonable cause for believing in the necessity of the act which is impugned? and in determining this point a soldier may take the orders of the person in command into view as proceeding from one who is better able to judge and well informed; and, if the circumstances are such that the command may be justifiable, he should not be held guilty for declining to decide that it is wrong, with the responsibility incident to disobedience, unless the case is so plain as not to admit of a reasonable doubt. A soldier consequently runs little risk in obeying any order which a man of common sense so placed would regard as warranted by the circumstances.[6]

At the close of the Civil War in the United States, the indignation aroused in the North by the treatment of prisoners of war at Andersonville, Georgia, resulted in the trial of the commandant of that prison, Henry Wirz, for crimes which it was alleged were committed by him or by his orders. One of the pleas of the accused was that he merely acted as a subordinate in carrying out the orders of the commander of the post. The Judge Advocate admitted that the accused acted under orders, but replied, "A superior officer cannot order a subordinate to do an illegal act, and if a subordinate obey such an order and disastrous consequences result, both the superior and the subordinate must answer for it. General Winder could no more command the prisoner to violate the laws of war than could the prisoner do so without orders." Wirz was convicted on

[4] Dicey, Law of the Constitution, pp. 301-302.
[5] Birkhimer, Military Government and Martial Law, pp. 561-562.
[6] *Ibid.*, p. 565.

all counts and executed in the arsenal grounds at Washington on November 10, 1865.

In the course of his argument in the Wirz case, the Judge Advocate called attention to a case in Scotland where an officer was convicted of murder in a Scotch court for killing a French prisoner of war, under the following circumstances:

> Ensign Maxwell was tried in 1807, before the High Court of Justiciary of Scotland, for the murder of Charles Cottier, a French prisoner of war, at Greenlow, by improperly ordering John Low, a sentinel, to fire into a room where Cottier and other prisoners were confined, and so causing him to be mortally wounded. Maxwell was in charge of three hundred prisoners of war; the building in which they were confined was of no great strength and afforded some possibility of escape; to prevent which, the prisoners being turbulent, an order was given that all lights were to be put out at 9 o'clock; if not done at the second call, the guard would fire upon the prisoners, due notice having been given them. On the night in question there was a tumult in prison. Maxwell's attention being drawn to it, he observed a light burning beyond the appointed hour and twice ordered it to be put out; this order not being obeyed, he directed the sentry to fire, which he did, Cottier receiving a mortal wound. Maxwell was found guilty, with recommendation to mercy, and was sentenced to nine months' imprisonment." (Scott's Dictionary, p. 267.)

Military men naturally seek to protect themselves as much as possible from any personal consequences of their acts; hence these sweeping amnesties for whatever is committed under orders in the present codes of military law. It is submitted that this is a subject which ought to receive careful consideration by any conference, private or governmental, which undertakes to deal with the restatement of the laws of war. The unqualified acceptance of the principle that a subordinate is not responsible for what he does under orders of his superiors will make it practically impossible to enforce proper penalties for violations of the laws of war designed to humanize, if such be possible, that grim recourse.

GEORGE A. FINCH.

CURRENT NOTES

THE ANNUAL MEETING OF THE SOCIETY

Pursuant to the announcement printed in the January number of the JOURNAL, and to the program subsequently sent to the members, the Society held its first meeting since 1917 at Washington, on April 27-30, last. The meetings were well attended and the attendance was in fact so large that it overtaxed the accommodations which the committee had provided.

The general topic, "The Advancement of International Law," was considered in its fundamental aspects by the Honorable Elihu Root, President of the Society, in his presidential address delivered on opening the meeting on Wednesday evening, April 27. The address was not only well received, but has been pronounced by many who heard it as Mr. Root's greatest utterance on the subject of international law and relations. The address was extensively printed in the press of the country.

The Honorable Manoel de Oliveira Lima, former Minister of Brazil to Japan, Sweden, Belgium and Venezuela, also spoke on the same evening upon the subject of "The Reconstruction of International Law." His remarks were very interesting as giving the Latin-American point of view.

The topic was taken up more in detail the following day. On the morning of Thursday, April 28th, Mr. James Brown Scott spoke upon the "Advancement of International Law essential to an International Court of Justice."

The main consideration of the topic in detail was assigned to four subcommittees appointed in advance to submit reports to the Society. The subjects assigned to the subcommittees were as follows:

Subcommittee No. 1: To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

Subcommittee No. 2: To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

Subcommittee No. 3: To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

Subcommittee No. 4: To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

A special subject to illustrate the work of each subcommittee was

assigned to particular speakers. Following Dr. Scott's address on Thursday morning, Mr. Lester H. Woolsey, former Solicitor for the Department of State, read a paper on the "Munitions Trade" as illustrative of the work of Subcommittee No. 1. Mr. Charles Cheney Hyde, Professor of International Law in Northwestern University, read a paper on "Conditional Contraband" as illustrative of the work of Subcommittee No. 2, and Mr. George Grafton Wilson, Professor of International Law in Harvard University, read a paper on "Continuous Voyage" as illustrative of the work of Subcommittee No. 3. Papers illustrative of the work of Subcommittee No. 4 were read at the evening session of Thursday, the 28th, as follows: "International Criminal Jurisdiction," by Mr. Jesse S. Reeves, Professor of Political Science in the University of Michigan; "The Status of International Cables in War and Peace," by Mr. Elihu Root, Jr., of the New York Bar; "The International Regulation of Aërial Navigation," by Mr. Arthur K. Kuhn, of the New York Bar.

The Committee for the Advancement of International Law held a general meeting on the morning of Friday, April 29th, to coordinate the work of the subcommittees. The subcommittees met during the afternoon of the same day and completed their reports, which were submitted to the Society at its general meeting on the evening of the 29th. The reports were submitted by the following Chairmen: Mr. Charles Noble Gregory, Subcommittee No. 1; Dr. Harry Pratt Judson, Subcommittee No. 2; Hon. Simeon E. Baldwin, Subcommittee No. 3; Professor Paul S. Reinsch, Subcommittee No. 4.

At the closing session of the Society on Saturday morning, April 30th, the reports were received and the Committee for the Advancement of International Law continued with instructions to submit further reports to the Society at its next meeting.

The Executive Council held two sessions during the meeting, the first on the afternoon of Thursday, April 28th, and the second on the morning of Saturday, April 30th, after the adjournment of the Society. In addition to the performance of its routine work, it adopted a recommendation, which was presented to the Society on the morning of April 30th, that the constitution of the Society be amended so as to provide that hereafter members of the Council shall not be eligible for reëlection until after the lapse of one year from the expiration of their terms of office. This amendment will be submitted to and acted upon by the Society at its next annual meeting.

At the business meeting of the Society held on Saturday, April 30th, the amendment to the constitution proposed by the Council on November 13, 1920, relating to the charge for the Society's publications, was adopted. This amendment was set forth and explained in the January, 1921, number of the JOURNAL, page 76.

The members of the Society in attendance upon the meeting were

received at the White House by President Harding at 2.30 o'clock on the afternoon of Friday, April 29th.

The meeting closed with a banquet at the Shoreham Hotel on Saturday evening, April 30th. Mr. Root presided as toastmaster, and the speakers were Dr. Nicholas Murray Butler, President of Columbia University in the City of New York, and the Honorable Charles Evans Hughes, Secretary of State of the United States. His Serene Highness, the Prince of Monaco, had accepted an invitation to be a guest at the banquet, but was prevented by illness from attending.

All of the papers, discussions and reports will be printed as usual in the volume of annual proceedings and sent to all members who subscribe. The subscription price is fixed by the Executive Council at $1.50.

The following officers and committees were elected for the ensuing year:

HONORARY PRESIDENT

THE HONORABLE WARREN G. HARDING

PRESIDENT

HON. ELIHU ROOT

VICE-PRESIDENTS

HON. SIMEON E. BALDWIN
JUSTICE WILLIAM R. DAY
HON. JACOB M. DICKINSON
HON. GEORGE GRAY
MR. CHARLES NOBLE GREGORY
HON. DAVID JAYNE HILL
HON. CHARLES EVANS HUGHES
HON. P. C. KNOX
HON. ROBERT LANSING
HON. HENRY CABOT LODGE
HON. WILLIAM W. MORROW
HON. HORACE PORTER
HON. OSCAR S. STRAUS
HON. GEORGE SUTHERLAND
HON. WILLIAM H. TAFT
MR. EVERETT P. WHEELER
CHIEF JUSTICE WHITE
MR. THEODORE S. WOOLSEY

EXECUTIVE COUNCIL

HON. OSCAR S. STRAUS, CHAIRMAN

TO SERVE UNTIL 1922

HON. CHANDLER P. ANDERSON, New York
MR. CHARLES HENRY BUTLER, D. C.
MR. CHARLES C. HYDE, Illinois
MR. GEO. W. KIRCHWEY, New York
MR. JACKSON H. RALSTON, D. C.
MR. JAMES BROWN SCOTT, Maryland
PROF. GEORGE G. WILSON, Massachusetts
MR. LESTER H. WOOLSEY, New York

TO SERVE UNTIL 1923

MR. FREDERIC R. COUDERT, New York
MR. WILLIAM C. DENNIS, D. C.
HON. HENRY P. FLETCHER, Pennsylvania
HON. HARRY A. GARFIELD, Massachusetts
PROF. JOHN H. LATANÉ, Maryland
PROF. WM. R. MANNING, Texas
HON. FRANK C. PARTRIDGE, Vermont
HON. LEO S. ROWE, Pennsylvania

TO SERVE UNTIL 1924

HON. JOHN W. DAVIS, New York
PROF. AMOS S. HERSHEY, Indiana
HON. A. J. MONTAGUE, Virginia
MR. FRED K. NIELSEN, Nebraska
HON. JAMES L. SLAYDEN, Texas
ADMIRAL CHARLES H. STOCKTON, D. C.
MR. CHARLES B. WARREN, Michigan
PROF. PHILIP MARSHALL BROWN, New Jersey

COMMITTEES

Standing Committee on Selection of Honorary Members: GEORGE G. WILSON, Chairman; JACKSON H. RALSTON, THEODORE S. WOOLSEY.

Standing Committee on Increase of Membership: OSCAR S. STRAUS, Chairman; CHARLES CHENEY HYDE, JOHN H. LATANÉ, JESSE S. REEVES, WILLIAM C. DENNIS.

Auditing Committee: CHARLES CHENEY HYDE, CHARLES RAY DEAN.

Committee on Annual Meeting: JAMES BROWN SCOTT, Chairman; PHILIP M. BROWN, WILLIAM C. DENNIS, CHARLES NOBLE GREGORY, CHARLES CHENEY HYDE, ROBERT LANSING, BRECKINRIDGE LONG, JACKSON H. RALSTON.

Committee for the Advancement of International Law: ELIHU ROOT, Chairman; JAMES BROWN SCOTT, Secretary; GEORGE A. FINCH, Assistant Secretary.

Subcommittee No. 1: To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

Charles Noble Gregory, Chairman; Edwin D. Dickinson, Charles B. Elliott, Amos S. Hershey, David J. Hill, George A. King, Harry Shepard Knapp, Robert Lansing, John D. Lawson, Harold S. Quigley, Gordon E. Sherman.

Subcommittee No. 2: To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

Harry Pratt Judson, Chairman; Edwin M. Borchard, Sterling E. Edmunds, William I. Hull, Howard Thayer Kingsbury, Arthur K. Kuhn, John H. Latané, Raleigh C. Minor, Charles H. Stockton, James L. Tryon, Quincy Wright.

Subcommittee No. 3: To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

Simeon E. Baldwin, Chairman; Chandler P. Anderson, Percy Bordwell, Clement L. Bouvé, Philip Marshall Brown, Charles Henry Butler, William Miller Collier, Frederic R. Coudert, Henry G. Crocker, John Foster Dulles, Lawrence B. Evans, Charles Cheney Hyde, Breckinridge Long, Frank C. Partridge, George G. Wilson, Lester H. Woolsey.

Subcommittee No. 4: To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

Paul S. Reinsch, Chairman; Cephas D. Allin, Francis W. Aymar, George C. Butte, W. C. Dennis, Edward C. Eliot, Charles G. Fenwick, Edward A. Harriman, W. R. Manning, James H. Oliver, J. H. Ralston, Jesse S. Reeves, Ellery Cory Stowell, Eugene Wambaugh, Thomas Raeburn White, Frank H. Wood.

CHRONICLE OF INTERNATIONAL EVENTS

For the Period February 15, 1921—May 15, 1921.

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary Papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review. *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Cur. Hist.*, Current History (New York Times); *Daily digest*, Daily digest of reconstruction news; *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario oficial (Brazil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenossiche gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation (N. Y.)*; *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice. *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue international de la Croix-Rouge; *Staats.* Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

August, 1920.

22 Great Britain—Greece. Agreement relating to suppression of capitulations in Egypt signed at Athens. *G. B. Treaty series, 1921*, No. 5; *Cmd.* 1237.

27 Argentina—Venezuela. Argentina ratified the arbitration treaty of July 22, 1911, which Venezuela ratified on June 12, 1912. *B. O. (Argentina)*, Nov. 26, 1920; *P. A. U.*, April, 1921, p. 398.

September, 1920.

6 International Danube Commission. Renewed its session in Paris to discuss regulation of functions of Commission and projects for administration of Danube. *Temps*, Sept. 8, 1920, p. 1.

November, 1920.

12 *to Feb.* 26, 1921 Japan—United States. Texts of salient portions of correspondence on Yap claims published, including note of Nov. 12, 1920, from United States, reply of Japan of Nov. 19, note from United States of Dec. 10, and reply of Japan of Feb. 26. *Times*, Apr. 20, 1921, p. 9.

17 Honduras—Nicaragua. Agreement signed regarding political refugees and friendly solution of boundary difficulties. *P. A. U.*, April, 1921, p. 398.

30 DENMARK—GREAT BRITAIN. Agreement respecting matters of wreck came into force. *G. B. Treaty series,* 1921, No. 4; *Cmd.* 1223.

December, 1920.

4 AUSTRIA—BELGIUM. Belgium notified Austria that following conventions concluded with Austro-Hungarian monarchy were again put into force: (1) Extradition treaty of Jan. 12, 1881; (2) Agreement of April 30, 1871, relating to transfer of documents of the deceased. *Monit.,* Feb. 17, 1921, p. 1236.

5 FRANCE—GREAT BRITAIN. Decree issued in France concerning money-order conventions of Dec. 8, 1882, Sept. 21, 1887, and June 30, 1906. *J. O.,* Dec. 10, 1920, p. 20285.

21 AUSTRIA—GREAT BRITAIN. By an Order in Council, Great Britain notified Austria that certain articles of the Copyright act of April 24, 1911, are again in force. *London Ga.,* Dec. 31, 1920, p. 12705.

21 GREAT BRITAIN—GREECE. By an Order in Council, Great Britain notified Greece that certain articles and sections of Copyright Act of 1911 are in force between the two countries. *London Ga.,* Dec. 31, 1920, p. 12706.

28 GERMANY—SWITZERLAND. Ratifications of the provisional aërial traffic agreement and protocol signed at Berne Sept. 14, 1920, exchanged at Berne. Text: *E. G.,* Jan. 12, 1921, p. 25.

28 SOVIET RUSSIA—UKRAINE. Military and economic treaty signed at Moscow. Text: *Soviet Russia,* Feb. 26, 1921, p. 219.

January, 1921.

8 VENEZUELA. Decree issued announcing establishment of Venezuelan section of the Inter-American High Commission. *Venezuela, Gaceta,* Jan. 8, 1921, No. 14264.

15 BULGARIA—FRANCE. Notification sent Sofia that certain pre-war contracts are maintained, in accordance with Art. 180, paragraph *b,* Treaty of Neuilly-sur-Seine. *J. O.,* Mar. 3, 1921, p. 2766.

27 BELGIUM—BULGARIA. Belgium notified Bulgaria that the convention of extradition signed at Sofia, Mar. 28, 1908, is again in force. *Monit.,* Feb. 28/Mar. 1, 1921, p. 1691.

29 AUSTRIAN PEACE TREATY, Saint Germain, Sept. 10, 1919. Ratification deposited by Nicaragua. *J. O.,* Apr. 8, 1921, p. 4498.

29 BELGIUM—PORTUGAL. Ratifications exchanged at Lisbon of the Declaration governing importation of Portuguese wines, signed at Lisbon, Jan. 22, 1920, modifying Art. 2 of the Declaration for provisional regulation of commercial relations, signed Dec. 11, 1897. Text of declaration: *Monit.,* Feb. 28/Mar. 1, 1921, p. 1690.

31 FRANCE—HUNGARY. France informed Hungary that, conforming to paragraph *e* of Art. 231 of the Treaty of Trianon, the provisions of that article and its annex shall be applicable between France,

its colonies and protectorates, and Hungary, provided ratifications have been exchanged by July 1, 1921. *J. O.*, Apr. 3, 1921, p. 4154.

February, 1921.

6 FRANCE—GERMANY. Interpretation of regulations of Mixed Arbitration Tribunal made public. *Reichs. G.*, Feb. 15, 1921, No. 17, p. 160-162.

6 GERMANY—GREECE. Proclamation issued announcing renewal of convention regarding movable property, signed Athens, Dec. 1, 1910, dating from June 30, 1920. *Reichs. G.*, Feb. 12, 1921, No. 16, p. 149; *Deutsch. Reichs.*, Feb. 14, 1921, No. 37.

10 BOLIVIA—UNITED STATES. Bolivian Government recognized by the United States. *Cur. Hist.*, April, 1921, *14*: 158.

10 HAGERUP, GEORGE FRANCIS. Minister from Norway to Sweden, died at age of 68 years. *Figaro*, Feb. 10, 1921, p. 2.

15 FRANCE—GERMANY. Germany promulgated law approving convention signed at Baden-Baden, Mar. 3, 1920, relative to payment of pensions to residents of Alsace-Lorraine. *Reichs. G.*, 1921, No. 19, p. 176-185.

15 SERB-CROAT-SLOVENE STATE. Jugoslavia formally complained to Supreme Council that Bulgaria was not carrying out terms of Treaty of Neuilly, particularly those clauses relating to restitutions to be made to Serbia. *Cur. Hist.*, April, 1921, *14*: 173.

17(?) BOLIVIA—GREAT BRITAIN. Great Britain recognized new government of Bolivia. *Times*, Feb. 18, 1921, p. 9.

18 GERMANY—SOVIET RUSSIA. Provisional protocol signed at Moscow relative to commercial traffic, prisoners of war and rights of representation. *Temps*, Mar. 20, 1921, p. 6.

19 FRANCE—GERMANY. Decree issued in France putting into force the convention signed at Baden-Baden on Mar. 3, 1920, relative to payment of pensions to residents of Alsace-Lorraine and to conditions of application of Art. 62 of Treaty of Versailles, and ratified by both countries at Berlin, Feb. 14, 1921. Text of convention: *J. O.*, Feb. 24, 1921, p. 2455.

19 FRANCE—POLAND. Political and economic agreement signed, confirming and developing the mutual declaration of Feb. 5. Summary: *Temps*, Feb. 22, 1921, p. 1.

21 *to March* 14. COSTA RICA—PANAMA. Costa Rican army demanded surrender of Coto, Panama, on Feb. 21. Notes sent to Costa Rica and Panama by Secretary Colby on Feb. 28. Replies received on March 5. Secretary Hughes suggested solution of dispute by notes to both countries on March 5. Armistice arranged on March 7. *Cur. Hist.*, April, 1921, *14*: 148. Text of reply of Panama to Colby note of March 3 and Hughes note of March 5 made public. *N. Y. Times*,

March 11, 1921, p. 3. Note sent from United States to Panama on March 15, replying to Panama note of March 4. Text: *N. Y. Times,* March 18, 1921, p. 1. Notes exchanged on March 19 between President Porras and President Harding. Texts: *N. Y. Times,* March 20, 1921, p. 1. On April 1, notice served on Panama that attitude of United States relative to White award would not be changed. *Wash. Post,* April 2, 1921, p. 6. Reply of Panama to Hughes' note of March 15 approved by National Assembly. *N. Y. Times,* April 8, 1921, p. 1. Secretary Hughes' reply to protest against White award delivered to Panama on May 2. Text: *N. Y. Times,* May 3, 1921, p. 1.

21 League of Nations Council. Twelfth session opened in Paris. *N. Y. Times,* Feb. 22, 1921, p. 3.

21 *to Mar.* 12. Near East Conference. Opened at London, Feb. 21 to discuss modification of Treaty of Sèvres. Delegates were present from Greece and the two Turkish governments (Constantinople and Angora). Greek delegates agreed to consider proposal of Supreme Council to accept certain changes in status of Thrace and Smyrna, now occupied by Greece, while Turkish delegates agreed to accept these changes and other concessions with certain reservations. *Cur. Hist.,* April, 1921, *14*: 176. Proposals handed to Turkish and Greek delegations on March 12. Text: *Cur. Hist.,* May, 1921, *14*: 347.

21 Yap Mandate. Note of protest against Japanese mandate sent to League of Nations Council by United States Government. *N. Y. Times,* Feb. 25, 1921, p. 3. Council's reply of March 1 admitted American contention regarding right of consultation on all mandate drafts, but declared right of allocation pertains only to Supreme Council. Text of note and reply: *Cur. Hist.,* April, 1921, *14*: 103.

23 Belgian Loan. Letter dated June 16, 1919, sent to U. S. Congress embodying agreement made with Belgium by British and French premiers and President Wilson on national loans to Belgium. Text: *S. Doc. 413,* 66th Cong., 3d sess.

24 Poland—Soviet Russia. Treaty providing for release of prisoners and hostages, including all Polish and Russian nationals who desire to return to their homes, was signed at Riga. *Times,* Feb. 28, 1921, p. 9.

25(?) Costa Rica—Great Britain. Ultimatum delivered to Costa Rica demanding payment of bonded debt and confirmation of so-called Amory oil concessions obtained from former Tinoco government. *Wash. Post,* Feb. 26, 1921, p. 1.

26(?) League of Nations Council. Approved Bourgeois report on disarmament. Summary: *Temps,* Feb. 27, 1921, p. 2.

26 Persia—Soviet Russia. Treaty signed at Moscow providing for withdrawal of Russian troops from Persia, dissolution of Soviet Republic

of Gilan, and maintenance of Persian independence. *Times,* Mar. 26, 1921, p. 9. Text: *Nation* (*N. Y.*), May 11, 1921, p. 696; *Soviet Russia,* Apr. 30, 1921, p. 426.

28 AFGHANISTAN—SOVIET RUSSIA. Treaty signed at Moscow to strengthen friendly relations and confirm independence of Afghanistan. Text: *Nation* (*N. Y.*), May 11, 1921, p. 698.

28(?) MEXICO. Executive decree issued prohibiting entry of foreign laborers into the country during present scarcity of employment, notably in the oil regions. Text: *Press notice,* Mar. 19, 1921.

28 RHINE COMMISSION. Commission consisting of representatives of Belgium, France, Great Britain, Holland, Italy, Switzerland and the German states met at Strasbourg to consider Rhine police, revision of Mannheim Act of 1868, and works of the port as provided in Art. 358 of Treaty of Versailles. *Temps,* Mar. 1, 1921, p. 2.

March, 1921.

1 AFGHANISTAN—TURKEY. Treaty signed in Moscow establishing diplomatic and consular relations, and providing for mutual assistance in event of attack by a third Power. *Times,* Apr. 16, 1921, p. 7.

1–7 INTERALLIED CONFERENCE OF GERMAN REPARATIONS. Opened in London on Mar. 1. Germany's counter-proposals to Allied demands at Paris conference, submitted by Dr. Simons, were declined on Mar. 3. On Mar. 7 Germans submitted new proposals, which were again declined. Dr. Simons replied that Germany would agree to Paris decisions for five years, subject to Upper Silesia remaining German. The conference then adjourned and German delegation left London on Mar. 8. Text of proposals and speeches: *N. Y. Times,* Mar. 4, 1921, p. 1; *Times,* Mar. 8, 1921, p. 11; *Cur. Hist.,* April, 1921, *14*: 26, 33.

1 NICHOLAS I OF MONTENEGRO. Died at Antibes, aged 79 years. *Temps,* Mar. 3, 1921, p. 5.

1 YAP MANDATE. Reply of League of Nations Council to Colby letter of Feb. 21, sent to Washington. Text: *N. Y. Times,* Mar. 8, 1921, p. 10.

2 HUNGARY—POLAND—RUMANIA. Formal alliance against Bolshevism signed at Budapest. *Cur. Hist.,* April, 1921, *14:* 171.

2 POLAND—RUMANIA. Political agreement signed. *Cur. Hist.,* May, 1921, *14:* 219.

3 MIGRATORY BIRDS. President Wilson issued proclamation further amending regulations of July 31, 1918. *Proclamation* No. 1588.

4 GERMAN REPARATIONS. Berlin addressed note to Secretariat of League of Nations protesting against Allies' penalties. Text: *Times,* Mar. 23, 1921, p. 9. Reparations Commission on Mar. 16 called upon Germany to prepare to pay by May 1 the balance of the 20,000,000,000

gold marks due under terms of treaty. Text: *Cur. Hist.*, April, 1921, *14:* 162. German reply declared unacceptable. *N. Y. Times,* Mar. 26, 1921, p. 2. On Mar. 23, German Foreign Office sent memorandum on reparations to United States government. Reply of Mar. 29 contained formal declaration of American policy. Text of both notes: *N. Y. Times,* Apr. 5, 1921, p. 2; *Wash. Post,* Apr. 5, 1921, p. 4. On April 20, Germany addressed memorandum to President Harding requesting mediation on reparations. Proposal declined on April 21. Text of both notes: *N. Y. Times,* Apr. 22, 1921, p. 1; *Wash. Post,* Apr. 22, 1921, p. 1. Reply made public on April 27 contained new proposals. Text: *Temps,* Apr. 28, 1921, p. 1; *N. Y. Times,* Apr. 27, 1921, p. 1. On April 30, Supreme Council met in London to consider reparations question. *Times,* May 2, 1921, p. 8. Secretary Hughes' note of May 2 informed Dr. Simons that German reparation counter-proposals are unacceptable as a basis for discussion. Text: *N. Y. Times,* May 3, 1921, p. 1. Allied ultimatum sent to Berlin on May 5 required reply by May 12. Text: *Wash. Post,* May 6, 1921, p. 1, 5. *Times,* May 6, 1921, p. 9. Allied ultimatum accepted on May 10 by Reichstag by vote of 221—175. *Wash. Post,* May 11, 1921, p. 1; *N. Y. Times,* May 11, 1921, p. 1. Unconditional acceptance of Entente reparations terms delivered to Lloyd George on May 11. Text: *N. Y. Times,* May 12, 1921, p. 1.

4 GERMAN WAR CRIMINALS. Reichstag adopted bill providing for trial of war criminals named in the Entente's list. *N. Y. Times,* May 5, 1921, p. 3.

7 ARGENTINA—UNITED STATES. Commercial travelers' convention signed Oct. 22, 1920, ratified by the U. S. Senate. Text: *Cong. Rec.,* Mar. 7, 1921, p. 14.

7 GREAT BRITAIN—UNITED STATES. Convention of March 2, 1899, ratified by United States Senate. Clause 3 of Article 4 relating to tenure and disposition of property was therefore made to apply to Hawaii. Text of treaty and supplement and correspondence: *Cong. Rec.,* Mar. 7, 1921, p. 16.

7 GREECE—UNITED STATES. Commercial agreement signed Oct. 18, 1920, modifying the treaty of Dec. 22, 1837, was ratified by the United States Senate. Text: *Cong. Rec.,* Mar. 7, 1921, p. 14.

7 PORTUGAL—UNITED STATES. Agreement signed at Lisbon, Sept. 14, 1920, extending duration of arbitration convention of Apr. 6, 1908, was ratified by the United States Senate. Text: *Cong. Rec.,* Mar. 7, 1921, p. 16.

8 ALLIED OCCUPATION OF GERMAN TOWNS. Düsseldorff, Duisburg and Ruhrort occupied by French, British and Belgian troops as penalty for non-observance of treaty. *Cur. Hist.,* Apr., 1921, *14:* 32.

9 FRANCE—TURKEY. Agreement signed in London for the immediate cessation of hostilities, evacuation of Cilicia, exchange of prisoners and protection of Armenians, etc. Summary: *Temps,* Mar. 13, 1921, 1, 4. Twelve points in agreement: *Cur. Hist.,* May, 1921, *14:* 203. Text: *Contemp. R.,* May, 1921, p. 677.

10 FRANCE—GREAT BRITAIN. President of France promulgated the convention signed Sept. 8, 1919, completing the agreement of June 14, 1898, and the declaration of Mar. 21, 1899, fixing the frontiers of their possessions and zones of influence east and west of the Niger. *J. O.,* Apr. 10, 1921, p. 4562.

11–18 GERMAN REPARATION (recovery) BILL. Introduced in Parliament on Mar. 11, became a law on March 18 by vote of 215—132, and went into effect on March 31. *Cur. Hist.,* May, 1921, *14:* 206.

11 LITHUANIA—POLAND. Lithuania accepted League Council proposal for direct negotiations for settlement of territorial dispute. Meetings to be held in Brussels. *N. Y. Times,* Mar. 12, 1921, p. 1.

12 CANADA—FRANCE. Decree issued in France promulgating the commercial arrangement signed at Paris, Jan. 29, 1921. Text of agreement: *J. O.,* Mar. 13, 1921, p. 3135; *Bd. of Trade J.,* Mar. 17, 1921, p. 306.

12 ITALY—TURKEY. Economic agreement signed at London, regulating the conditions of Italian zone of influence in Turkey, and providing for withdrawal of Italian troops from Ottoman territory. Summary: *Cur. Hist.,* May, 1921, *14:* 205; *Temps,* Mar. 14, 1921, p. 2.

15 BELGIUM—GREAT BRITAIN. Convention to facilitate traffic across East Africa, signed at London. Text: *Monit.,* Apr. 23, 1921, p. 3398.

15 SPAIN. Spanish Cabinet decided to suspend all commercial treaties in force, to continue inoperative until new customs tariffs have been promulgated. *Wash. Post,* Mar. 18, 1921, p. 6.

16 GREAT BRITAIN—SOVIET RUSSIA. An agreement for opening of trade relations and a declaration respecting recognition of claims were signed at London. Note from Sir Robert Horne accompanying the agreement served notice upon Soviet authorities to stop clandestine work for overthrow of British rule in India. Text of agreement: *Bd. of Trade J.,* Mar. 17, 1921, p. 295; *Cur. Hist.,* May, 1921, *14:* 257; *Cmd.,* 1207.

16 PERMANENT COURT OF INTERNATIONAL JUSTICE. League of nations appealed to all members to take measures for signature and ratification of the protocol establishing the court. *Times,* Mar. 18, 1921, p. 9.

16 SOVIET RUSSIA—TURKEY. Treaty signed at Moscow between Soviet Russia and Turkish Nationalists establishing friendly relations, with agreement of Russia to recognize Constantinople as capital of Turkey, of Turkey to give Batum to Georgia, and for division of Ar-

menia among Georgia, Azerbaidjan and Turkey. *Times,* Mar. 21, 1921, p. 11; *Cur. Hist.,* May, 1921, *14:* 351. Summary: *Contemp. R.,* May, 1921, p. 683.

16(?) SPAIN—UNITED STATES. Secretary Hughes made diplomatic representations to Spain regarding Spanish law of Apr. 29, 1920, for taxing foreign companies operating in Spain. *N. Y. Times,* Mar. 17, 1921, p. 12.

17 POLAND. Constitution of the republic adopted. Text: *Cur. Hist.,* May, 1921, *14:* 358.

18 CZECHOSLOVAK REPUBLIC—POLAND—RUMANIA. Defensive alliance formed. *N. Y. Times,* Mar. 19, 1921, p. 10; *Cur. Hist.,* May, 1921, *14:* 219.

18 GERMAN ARMY. Reichstag passed bill abolishing conscription and fixing strength of army at 100,000 men and of the navy at 15,000 men. *N. Y. Times,* Mar. 20, 1921, p. 2.

18 POLAND—SOVIET RUSSIA AND UKRAINE. Political and economic treaty signed at Riga on March 18 between Russia and Ukraine on the one part and Poland on the other. *Times,* Mar. 19, 1921, p. 9. Text: *Nation* (*N. Y.*), May 18, 1921, p. 720. Ratified by Poland on Apr. 16. *Temps,* Apr. 18, 1921, p. 2. Ratified by Soviet Russia on Apr. 21. *Temps,* Apr. 24, 1921, p. 2.

19 FRANCE—GREAT BRITAIN. Convention on mandates in Asia, signed Dec. 23, 1920, made public. Text: *Temps,* Mar. 20, 1921, p. 2; *Cmd.,* 1195.

20 BULGARIA. Report of special commission, organized to inquire into the doings of the Radoslavoff Cabinet which forced the country into war on German side, was made public in a volume of 218 pages. *Cur. Hist.,* May, 1921, *14:* 353.

20 DENMARK—SPAIN. Commercial and navigation convention of July 4, 1893, prolonged for three months. *Ga. de Madrid,* Mar. 24, 1921, p. 918.

20 ITALY—SPAIN. Commercial and navigation treaty of Mar. 30, 1914, prolonged for an indefinite period subject to termination on one month's notice by either party. *Ga. de Madrid,* Apr. 18, 1921, p. 235.

20 NETHERLANDS—SPAIN. Agreement reached to prolong for three months the commercial declaration of July 12, 1892. *Ga. de Madrid,* Apr. 18, 1921, p. 235.

20 SPAIN—SWEDEN. The commercial convention of June 27, 1892, was prolonged for three months. *Ga. de Madrid,* Mar. 24, 1921, p. 918.

20 SPAIN—SWITZERLAND. The commercial treaty of Sept. 1, 1906, was prolonged for two months. *Ga. de Madrid,* Mar. 24, 1921, p. 918.

21 BELGIUM. Government accepted proposal of Council of League that International Bureau established by the General Act of 1890 for the control of traffic in arms and munitions shall perform similar function as regards Treaty of St. Germain. *L. N. M. S.*, April, 1921, p. 8.

21 BRAZIL—GREAT BRITAIN. Treaty promulgated by Brazil establishing permanent international commission to examine all questions in litigation not regulated by previous arrangements. *Temps*, Mar. 23, 1921, p. 1.

21 SILESIA. Plebiscite returns gave Germany 713,700 votes and Poland 460,700 votes, approximately 61 per cent in favor of Germany. *Wash. Post*, Mar. 22, 1921, p. 1; *Times*, Mar. 23, 1921, p. 11.

23 BELGIUM—GERMANY. Belgian Parliament passed the 50 per cent tax on German imports by vote of 128—19. *Cur. Hist.*, May, 1921, *14:* 207.

23 CHINESE CONSORTIUM. Formal approval of United States expressed in letter from State Department to J. P. Morgan & Co. *N. Y. Times*, Mar. 30, 1921, p. 17.

23 LATVIA—SPAIN. Spain recognized independence of Latvia. *Ga. de Madrid*, Mar. 27, 1921, p. 941.

24 FRANCE—UNITED STATES. Decree issued in France promulgating the agreement of July 17, 1919, amending Art. VII of the convention of navigation and commerce, concluded June 24, 1822. *J. O.*, Mar. 26, 1921, p. 3734.

24 JAPAN MANDATES. Japan's intentions as mandatory for the former German islands in the Pacific, among them the island of Yap, are outlined in a 700-word communiqué issued by Foreign Office. Summary: *N. Y. Times*, Mar. 26, 1921, p. 2. *Naval Inst. Proc.*, May, 1921, p. 794. Text in part: *Cur. Hist.*, May, 1921, *14:* 194.

24 SOVIET RUSSIA—UNITED STATES. Communication of Mar. 20 from Russian Government to United States relating to trade resumption made public. Text: *N. Y. Times*, Mar. 24, 1921, p. 1. Reply of United States dated Mar. 25 made public. Text: *N. Y. Times*, Mar. 26, 1921, p. 1. Text of both notes: *Cur. Hist.*, May, 1921, *14:* 391-2.

25 LATVIA—LITHUANIA. Decision of arbitration commission on boundary dispute made public. *Cur. Hist.*, May, 1921, *14:* 267; *Temps*, Apr. 18, 1921, p. 2.

26 *to Apr.* 6. HUNGARY. Ex-Emperor Charles returned to Budapest on Mar. 26 in attempt to regain throne, but was forced to leave the country on April 6. *Cur. Hist.*, May, 1921, *14:* 216.

29 FAR EASTERN REPUBLIC. Note to American Legation at Peking formally announced the organization at Chita, by constitutional methods, of a new state, the Far Eastern Republic. *Cur. Hist.*, May, 1921, *14:* 246.

30 AFGHANISTAN—ANGORA. Treaty signed. *Temps*, Apr. 1, 1921, p. 1.

30 GERMAN DISARMAMENT. Note of March 18 from Allies to Germany demanding remedy of certain matters by March 31 and German reply of March 26, asking Council of Ambassadors to arbitrate certain questions of disarmament, made public in Berlin on Mar. 30. *Times,* Mar. 31, 1921, p. 7. Premier Briand of France answered German note by saying that all these questions had been settled on Jan. 29 and ordering Germany to carry out Allies' demands or take consequences of refusal. *Cur. Hist.,* May, 1921, *14:* 212. Further note to Germany required adoption by May 20 of list of factories permitted to manufacture war material, which was drawn up by Interallied Commission, and withdrawal of licenses from all other factories. *Times,* May 18, 1921, p. 7.

30 *to Apr.* 7 RED CROSS. Tenth international conference held in Geneva. Summary of proceedings and text of three resolutions adopted relating to the limitations of war, a diplomatic conference on an international code of prisoners of war, and the revision of the Convention of Geneva of 1906. *Rev. int. de la Croix-Rouge,* April 15, 1921.

April, 1921

1 NORWAY—UNITED STATES. United States Government sent note to Norway stating its readiness to accept arbitration before Hague Permanent Court on Norway's claim for $14,000,000 for requisitioned ships. *Wash. Post,* Apr. 5, 1921, p. 6; *N. Y. Times,* Apr. 6, 1921, p. 1.

4 RUMANIA—SPAIN. Rumania gave notice of its denunciation of the commercial convention of Dec. 1, 1908. *Ga. de Madrid,* Apr. 16, 1921, p. 222.

4 YAP MANDATE. Note addressed by Secretary Hughes to France, Great Britain, Italy and Japan, relative to the status of the Island of Yap. Text: *Cur. Hist.,* May, 1921, *14:* 192; *N. Y. Times,* Apr. 17, 1921, p. 2.

5 GREAT BRITAIN—UNITED STATES. Correspondence in respect to economic rights in mandated territories (concessions for oil in Mesopotamia), including text of Curzon's reply of Feb. 28 to Colby note of Nov. 20, published as *Cmd.* 1226. *Times,* Apr. 6, 1921, p. 9.

5 PERSIA—UNITED STATES. New government of Persia which came into power on February 20 sent statement to United States of its policy favoring abrogation of Anglo-Persian treaty and the evacuation of Persia by foreign troops. *N. Y. Times,* Apr. 6, 1921, p. 6; *Cur. Hist.,* May, 1921, *14:* 355.

6 AUSTRIA. Text of statement published, drawn up by Finance Committee of League, setting forth conditions under which it would undertake task of reestablishing Austria's financial position. Summary: *L. N. M. S.,* Apr. 21, 1921, p. 5.

7 CZECHOSLOVAK REPUBLIC—FRANCE. Agreement reached by an exchange of notes concerning social status of nationals. Text: *J. O.*, Apr. 19, 1921, p. 4851.

7 FRANCE—GERMANY. Document from Germany delivered to French Foreign Office asking that all of Upper Silesia be given to Germany. Same note sent to England, Italy and Japan. *N. Y. Times*, Apr. 9, 1921, p. 3.

7 MANDATE QUESTION. Sir Eric Drummond, Secretary-General of the League of Nations, made statement on subject of mandates in respect to powers of Parliament and position of League. Text in part: *Times*, Apr. 7, 1921, p. 10.

7 SILESIA. German Government presented to Allied Governments and the Inter-Allied Commission at Oppeln a note giving final figures of plebiscite vote and proposing that entire territory in which elections were held should be integrally assigned to Germany. Summary: *Times*, Apr. 9, 1921, p. 7.

9 CENTRAL AMERICAN UNION. Pact signed on Jan. 19, 1921, by Costa Rica, Guatemala, Honduras and Salvador, was ratified by Guatemala, thus bringing the new federation into being, Honduras and Salvador having previously ratified it. *Guatemalteco*, April 13, 1921, p. 356. Text of pact: *Cur. Hist.*, April, 1921, p. 153; *P. A. U.*, May, 1921, p. 446.

9 FRANCE—GERMANY. By exchange of notes of March 31 and April 9, the Foreign Ministers of both countries approved agreement relative to application of certain provisions of sections III and IV of part X of the Treaty of Versailles. *J. O.*, Apr. 21, 1921, p. 4906.

11 GREAT BRITAIN—UNITED STATES. British memorandum presented to United States Government proposing that the United States appoint a commissioner to confer with British Petroleum Commission for adjustment of differences in connection with San Remo oil agreement. *Times*, Apr. 12, 1921, p. 10.

12 CHINA—MONGOLIA. Special emissary from the living Buddha and Gen. Ungern-Sternberg reached Peking bearing draft of proposal for conclusion of peace between China and outer Mongolia on basis of terms of Kiakhta convention and recognizing that Mongolia belongs to China. *Wash. Post*, Apr. 13, 1921, p. 3.

12 HUNGARY. Hungarian Government informed Swiss Federal Council that it considers former Emperor Charles as Hungary's lawful sovereign and asked permission for him to reside permanently in Switzerland. *N. Y. Times*, Apr. 13, 1921, p. 1.

12 INTERPARLIAMENTARY UNION. Council met in Geneva under presidency of Lord Weardale with ten nations represented. *N. Y. Times*, Apr. 15, 1921, p. 2.

13 CANADA—UNITED STATES. House of Commons refused to adopt reciprocity agreement, signed in Washington Jan. 21, 1911, by vote of 100—79. *Wash. Post,* Apr. 14, 1921, p. 4.

13 FRANCE—MOROCCO. Modification of postal convention of Oct. 1, 1913, relating to Morocco having been signed at Paris on July 5, 1920, and duly ratified, the same was promulgated by the President of France. Text: *J. O.,* Apr. 16, 1921, p. 4786.

14 FRANCE—GERMANY. French Chamber of Deputies adopted the 50 per cent tariff bill on German imports by vote of 383—79. *Cur. Hist.,* May, 1921, *14:* 207.

14 FRANCE—UNITED STATES. Reply of France of April 7 to United States note of April 4, relative to the status of the Island of Yap made public. Text: *N. Y. Times,* Apr. 15, 1921, p. 1; *Adv. of Peace,* May, 1921, p. 190.

15 SPAIN—UNITED STATES. Spain sent protest to President Harding against continued occupation of Santo Domingo by United States troops. *Cur. Hist.,* June, 1921, *14:* 540.

18 GREAT BRITAIN—RUMANIA. Treaty of commerce and navigation, signed at Bucharest, Oct. 31, 1905, denounced by Rumania, effective Apr. 18, 1922. *Lond. Ga.,* May 10, 1921, p. 3750; *Bd. of Trade J.,* May 19, 1921, p. 560.

19 GREAT BRITAIN—UNITED STATES. Note sent to Great Britain denying that United States had directed Consul at San José to have Costa Rica cancel the Amory oil concession. *Cur. Hist.,* June, 1921, *14:* 535.

19 MEXICO. Mexican delegation in London gave out a statement on the authority of President Obregon concerning Mexico's foreign policy. *Cur. Hist.,* June, 1921, *14:* 533.

19 NETHERLANDS—UNITED STATES. Note from United States delivered at The Hague insisting that American oil corporations must have equal opportunities with the Royal Dutch Company or any other company in the development of the Djambi oil fields in Sumatra. Text: *N. Y. Times,* Apr. 30, 1921, p. 1; *Wash. Post,* April 30, 1921, p. 13; *Times,* May 2, 1921, p. 8.

20 ALLIED CUSTOMS COLLECTIONS. A 25 per cent German tariff became collectible at eastern frontier of the Rhineland. *Cur. Hist.,* May, 1921, *14:* 207.

20 COLOMBIA—UNITED STATES. Treaty signed at Bogota, April 6, 1914, for settlement of differences arising out of events which took place on Isthmus of Panama in November, 1903, ratified by the United States Senate with amendments. *Cong. Rec.,* Apr. 20, 1921, p. 1-2. Text as passed: *Cur. Hist.,* June, 1921, *14:* 542.

20 INTERNATIONAL COMMUNICATIONS AND TRANSIT CONFERENCE. Barcelona conference, which opened on Mar. 10, adjourned. Summary of

work accomplished given by M. Hanotaux. *Temps,* Apr. 22, 1921, p. 1; *L. N. M. S.,* April, 1921, p. 2-3.

20 LITHUANIA—POLAND. Negotiations opened at Brussels on Vilna question. *Temps,* Apr. 21, 1921, p. 2; *L. N. M. S.,* April, 1921, p. 6.

21 DANZIG—POLAND. Convention signed at Paris regulating conditions of communication by rail and water, postal telegraph and telephone routes between western Europe and Germany, and eastern Prussia and the Baltic states. *Temps,* Apr. 23, 1921, p. 2.

23 FRANCE. Law promulgated extending for six months the law of Apr. 23, 1920, which prolonged the law of Nov. 11, 1915, concerning the sale of vessels to foreigners. *J. O.,* Apr. 24, 1921, p. 5007.

23 JAPAN—VLADIVOSTOK. Announcement made that Japan has decided to recognize Vladivostok as a free city and guarantee it against Bolshevist menaces. *Temps,* Apr. 25, 1921, p. 1.

23 NICARAGUA. Announced withdrawal of membership in League of Nations owing to expense involved. *Cur. Hist.,* June, 1921, *14:* 535.

24 TYROL PLEBISCITE. More than 90 per cent of ballots cast in favor of union with Germany in unofficial plebiscite. *N. Y. Times,* Apr. 25, 1921, p. 15.

25 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. British House of Commons voted to ratify. *Temps,* Apr. 27, 1921, p. 2.

26 CABLE LICENSE BILL. S. 535, giving President of United States authority over cable landings on American shores passed Senate. *Cong. Rec.,* April 26, 1921, p. 611.

27 GERMAN WAR CRIMINALS. Arrangements completed for trial of four of the war criminals at Supreme Court of Leipzig to begin on May 23. *Times,* Apr. 28, 1921, p. 11.

27 GREAT BRITAIN—UNITED STATES. Supplementary extradition convention regarding desertion or nonsupport of minor or dependent children ratified by United States Senate. *Cong. Rec.,* Apr. 27, 1921, p. 663.

27 SIAM—UNITED STATES. Treaty concluded Dec. 16, 1920, revising treaties heretofore existing between the two countries and protocol of same date, were ratified by United States Senate. Text of treaty: *Cong. Rec.,* Apr. 27, 1921, p. 663.

28 CZECHOSLOVAK REPUBLIC—FRANCE. Presidential decree published putting into immediate effect the commercial convention and protocol signed Paris, Nov. 4, 1920. Texts of convention and protocol: *J. O.,* May 2, 1921, p. 5316-5322.

29 ITALY—UNITED STATES. Reply of Italy to United States note of April 5 expressed entire accord with policies of United States as stated in American note. Text: *N. Y. Times,* Apr. 30, 1921, p. 2. *Adv. of Peace,* May, 1921, p. 191.

29 NETHERLANDS. Second Chamber of Parliament voted adoption of Djambi oil field bill, thus barring bid of Standard Oil Company for a concession in the Sumatra oil region. *Wash. Post,* Apr. 30, 1921, p. 1.

30(?) CZECHOSLOVAK REPUBLIC—RUMANIA. Political and military agreement concluded for defense of territorial integrity and action against restoration of Hapsburgs in Hungary. *Evening Star,* May 2, 1921; *Temps,* May 3, 1921, p. 1.

30 KNOX PEACE RESOLUTION. United States Senate passed resolution ending state of war between United States, on the one hand, and Germany and Austria-Hungary, on the other. *Cong. Rec.,* April 30, 1921, p. 830.

May, 1921

1 AUSTRIA. Text of memorandum of Finance Committee of League of Nations suggesting internal reforms on basis of possible foreign credits, handed to Austrian Government. *N. Y. Times,* May 2, 1921, p. 1.

2 SILESIA. As a result of disorders in Upper Silesia that district was put under martial law by Inter-Allied Commission. *N. Y. Times,* May 4, 1921, p. 3.

3 LEAGUE OF NATIONS ASSEMBLY. Summons sent to members of League for second session of Assembly to be opened at Geneva Sept. 5, accompanied by provisional agenda. *N. Y. Times,* May 4, 1921, p. 2.

4 FRANCE—SWITZERLAND. The intention of France to denounce treaty stipulations giving Swiss Canton of Geneva special customs rights in adjacent French territory made public. *Nation* (*N. Y.*), May 4, 1921, p. 1.

5 SILESIA. Germany sent identical notes to Paris, London, and Rome stating that most of Upper Silesia was held by Polish bands, calling upon Allies to keep order there, and offering to aid Allies in their task. French reply of May 8 ordered Germans to keep her Reichswehr out of Silesia. *N. Y. Times,* May 10, 1921, p. 1.

5 UNITED STATES. Formal invitation extended by Allied Powers for representation of United States on Supreme Council, Reparations Commission and Council of Ambassadors. *Wash. Post,* May 6, 1921, p. 1. Accepted in note of May 6. Text: *Wash. Post,* May 7, 1921, p. 1. Text of both notes: *Adv. of Peace,* May, 1921, p. 187.

6 AUSTRIA—CZECHOSLOVAK REPUBLIC. Commercial convention signed at Prague. *Temps,* May 9, 1921, p. 1.

6 CZECHOSLOVAK REPUBLIC—RUMANIA. Boundary commission began sessions at Prague. *Temps,* May 7, 1921, p. 1.

8 AUSTRIA. Summary of Austria's reply to Financial Commission of the League of Nations regarding rehabilitation of Austria made public. *N. Y. Times,* May 9, 1921, p. 3.

8 GERMANY—SOVIET RUSSIA. Text of preliminary trade agreement, signed in Berlin on May 6, made public. Summary: *Times,* May 9, 1921, p. 10.

9 PERMANENT COURT OF INTERNATIONAL JUSTICE. Adherence of Belgium to the Court brought number of signatories to 33. *Times,* May 16, 1921, p. 7.

10 ALAND ISLANDS. Aland Islands Commission submitted report to League of Nations, recommending that islands remain under Finnish sovereignty with guarantees for safeguarding of Swedish population. *Wash. Post,* May 11, 1921, p. 1; *Cur. Hist.,* June, 1921, *14:* 543.

10 COLOMBIA—VENEZUELA. Swiss Federal Council agreed to arbitrate the long-standing boundary dispute. *Wash. Post,* May 11, 1921, p. 6.

10 NETHERLANDS—UNITED STATES. Dutch Government's reply to American note concerning Djambi oil fields in Sumatra sent to Washington. *N. Y. Times,* May 12, 1921, p. 4. Summary received by State Department on May 12. *N. Y. Times,* May 13, 1921, p. 16.

11 ARGENTINA—UNITED STATES. Agreement reached at Buenos Aires for solution of difficulties causing boycott of Munson Line *Martha Washington* on March 29. *N. Y. Times,* May 12, 1921, p. 8.

11 AUSTRIA—FRANCE. Law promulgated approving ratification of convention signed Paris, Aug. 3, 1920, relative to regulations for application of section III of part X (economic clauses) of the Treaty of Saint-Germain, Sept. 10, 1919. *J. O.,* May 12, 1921, p. 5658.

11 AUSTRIA—MEXICO. Officially announced that Austria extended formal recognition to Mexican Government. *N. Y. Times,* May 12, 1921, p. 12.

12 AUSTRIA. Amended act passed by National Assembly providing for a plebiscite on union with Germany. *Wash. Post,* May 14, 1921, p. 1; *N. Y. Times,* May 15, 1921, II, 1.

12–13 AVIATION CONFERENCE. Held in London, with representatives from England, Belgium and France in attendance. *Temps,* May 12, 1921, p. 6.

12 GREAT BRITAIN—SOVIET RUSSIA. Lord Justice Banks of British Court of Appeals rendered decision that the British Government, through its trade agreement of March 16, had recognized the Soviet Government as the *de facto* government of Russia. *Times,* May 13, 1921, p. 9; *N. Y. Times,* May 13, 1921, p. 4.

13 SOVIET RUSSIA—TURKEY. Turkish Nationalist Government at Angora ratified treaty of Mar. 16, 1921, with Soviet Russia. *Wash. Post,* May 15, 1921, p. 1.

15 CENTRAL AMERICAN UNION—Costa Rican Congress ratified agreement. *Wash. Post,* May 16, 1921, p. 6.

19 IMMIGRATION RESTRICTION BILL. H. R. 4075 approved by President Harding. *Public.* No. 5, 67th Congress.

27 EMERGENCY TARIFF BILL. H. R. 2435 approved by President Harding. *Public.* No. 10, 67th Congress.

INTERNATIONAL CONVENTIONS

AERIAL NAVIGATION. Paris, Oct. 13, 1919.
Promulgation:
France, Jan. 29, 1921. *J. O.,* Jan. 30, 1921, p. 1411.

ARMS AND AMMUNITIONS TRADE. Paris, Saint Germain-en-Laye, Sept. 10, 1919.
Promulgation:
France, Apr. 15, 1921. *J. O.,* Apr. 20, 1921, p. 4874.

CONGO (General Act of Berlin). Berlin, Feb. 26, 1885. Revision, Saint Germain-en-Laye, Sept. 10, 1919.
Promulgation:
France. Apr. 15, 1921. *J. O.,* Apr. 20, 1921, p. 4874.

COPYRIGHT UNION. Protocol, Berne, Mar. 20, 1914.
Promulgation:
Belgium, Mar. 5, 1921. *Monit.,* Mar. 27, 1921, p. 2562.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908. Protocol, Mar. 20, 1914.
Adhesion:
Austria, Oct. 1, 1920. *Deutsch. Reichs.,* Mar. 17, 1921, No. 64; *Reichs. G.,* Mar. 17, 1921, No. 28, p. 225.
Czechoslovak Republic. Feb. 1, 1921. *Ga. de Madrid,* Mar. 24, 1921, p. 918; *Monit.,* Mar. 31, 1921, p. 2642.

INTERNATIONAL EXCHANGE OF DOCUMENTS AND PUBLICATIONS. Brussels, Mar. 15, 1886.
Adhesion:
Czechoslovak Republic (no date). *Monit.,* Mar. 20, 1921, p. 2327; *E. G.,* Mar. 23, 1921, No. 14, p. 203.
Poland. Nov. 19, 1920. *Monit.,* Mar. 28, 29, 30, 1921, p. 2549; *E. G.,* Apr. 13, 1921, No. 18, p. 244.

INTERNATIONAL OPIUM CONFERENCE, 3D. Final protocol. The Hague, June 25, 1914.
Signed:
Spain. Feb. 11, 1921. *Ga. de Madrid,* Feb. 20, 1921, p. 562.

LIQUOR TRAFFIC IN AFRICA. Saint Germain-en-Laye, Sept. 10, 1919.
Promulgation:
France. Apr. 15, 1921. *J. O.,* Apr. 20, 1921, p. 4874.

MERCHANDISE TRANSPORT BY RAILWAY. Berne, Oct. 14, 1890.
Ratification:
Poland. Feb. 21, 1921. *E. G.*, Mar. 2, 1921, No. 11, p. 176.
MOTOR VEHICLES, INTERNATIONAL CIRCULATION OF. Paris, Oct. 11, 1909.
Adhesion:
Finland, Dec. 7, 1920; *Monit.*, Feb. 14, 15, 1921, p. 1165.
Poland, Feb. 3, 1921. *Monit.*, Feb. 27, 1921, p. 1669.
POSTAL CONVENTION. Madrid, Nov. 13, 1920.
Ratification:
Colombia. To take effect May 15, 1921. *P. A. U.*, May, 1921, p. 525.
PROHIBITION OF NIGHT WORK FOR WOMEN. Berne, Sept. 26, 1906.
Adhesion:
Poland, Jan. 14, 1921: *Monit.*, Feb. 27, 1921, p. 1669; *Ga. de Madrid*, Feb. 22, 1921, p. 576.
PROTECTION OF INDUSTRIAL PROPERTY. Paris, Mar. 20, 1883. Revision, Brussels, Dec. 14, 1900. Washington, June 2, 1911.
Adhesion:
Serb-Croat-Slovene State. Jan. 4, 1921. *Ga. de Madrid*, Mar. 4, 1921, p. 753; *Monit.*, Mar. 5, 1921, p. 1817.
PROTECTION OF INDUSTRIAL PROPERTY [affected by the World War]. Berne, June 30, 1920.
Adhesion:
Denmark, Jan. 22, 1921 (with reservation). *Ga. de Madrid*, March 25, 1921, p. 926.
Hungary, March 26, 1921. *Deutsch. Reichs.*, May 4, 1921, No. 103.
New Zealand, Jan. 25, 1921. *Ga. de Madrid*, Mar. 25, 1921, p. 926.
Serb-Croat-Slovene State. Jan. 4, 1921. *Deutsch. Reichs.*, Feb. 19, 1921, No. 42; *Ga. de Madrid*, Mar. 25, 1921, p. 926.
Promulgation:
Belgium. Mar. 12, 1921. *Monit.*, Apr. 6, 1921, p. 2812; *Ga. de Madrid*, Apr. 12, 1921, p. 174.
Ratification:
Netherlands. Mar. 24, 1921. *Ga. de Madrid*, Apr. 12, 1921, p. 174; *Monit.*, Apr. 22, 1921, p. 3352.
PUBLIC HEALTH OFFICE. Rome, Dec. 9, 1907.
Adhesion:
Morocco (Spanish protectorate). Mar. 9, 1921. *Monit.*, Mar. 31, 1921, p. 2642; *E. G.*, Mar. 23, 1921, No. 14, p. 204.
Rumania. Jan. 5, 1921. *J. O.*, Apr. 27, 1921, p. 5082; *E. G.*, Mar. 23, 1921, No. 14, p. 204.
REPRESSION OF OBSCENE PUBLICATIONS. Paris, May 4, 1910.
Adhesion:
Poland. Mar. 15, 1921. *Ga. de Madrid*, Mar. 25, 1921, p. 926; *E. G.*, Mar. 30, 1921, p. 207; *Monit.*, Apr. 15, 1921, p. 3129.

SANITARY CONVENTION. Paris, Jan. 17, 1912.

Adhesion:

Monaco (Principality). Jan. 7, 1921. *Ga. de Madrid,* Jan. 8, 1921, p. 99.

Promulgation:

Netherlands. Feb. 5, 1921. Text: *Staatsblad* (Netherlands) No. 52, 1921.

Ratification:

Germany. (No date.) *J. O.,* May 11, 1921, p. 5626.

Honduras. Dec. 20, 1920.

Serb-Croat-Slovene State. Dec. 20, 1920. *Monit.,* March 19, 1921, p. 2305.

SLAVE TRADE, ETC. Brussels, July 2, 1890. Revision, Saint Germain-en-Laye, Sept. 10, 1919.

Promulgation:

France. Apr. 15, 1921. *J. O.,* Apr. 20, 1921, p. 4874.

TECHNICAL STANDARDIZATION OF RAILWAYS. Protocol, Berne, May 18, 1907.

Adhesion:

Poland. *E. G.,* April 13, 1921, No. 18, p. 232.

TELEGRAPH. St. Petersburg, July 22, 1875. Supplement, Lisbon, July 11, 1908.

Adhesion:

Venezuela. Mar. 1, 1921. *Ga. de Madrid,* Mar. 5, 1921, p. 762; *Monit.,* Mar. 21/22, 1921, p. 2379.

TRADE-MARKS REGISTRATION. Madrid, Apr. 14, 1891. Supplement, Brussels, Dec. 14, 1900. Revision, Washington, June 2, 1911.

Adhesion:

Serb-Croat-Slovene State. Jan. 4, 1921. *Ga. de Madrid,* Mar. 4, 1921, p. 753; *Monit.,* Mar. 5, 1921, p. 1817.

UNIVERSAL POSTAL CONVENTION. Madrid, Nov. 30, 1920.

Ratification:

France, Mar. 30, 1921. *J. O.,* Mar. 31, 1921, p. 3862.

WHITE PHOSPHORUS IN MATCHES. Berne, Sept. 26, 1906.

Adhesion:

Austria. March 23, 1921. *J. O.,* May 11, 1921, p. 5626; *E. G.,* April 13, 1921, No. 18, p. 244.

Poland. July 31, 1919. *J. O.,* March 5, 1921, p. 2886.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Poland (no date). *Monit.,* Mar. 7/8, 1921, p. 1885.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN[1]

Air Conference, 1920, proceedings of the, with appendices. (Cmd. 1157.) 2s. 10d.

China. Correspondence respecting the new financial consortium in. (Misc. 1921, No. 9.) 11d.

Copyright, international. Orders in Council, Dec. 21, 1920, amending the Order in Council of June 24, 1912, regulating copyright relations with the foreign countries of Berlin Copyright Union as regards Austria and Greece. (S. R. & O. 1920, Nos. 2442 and 2443.) 1½d each.

Egypt. Report of special mission to. (Egypt, No. 1, 1921.) 7½d.

Franco-British convention on certain points connected with the mandates for Syria and the Lebanon, Palestine, and Mesopotamia. (Misc. 1921, No. 4.) 1½d.

Germany. General report on industrial and economic situation in, December, 1920. (Cmd. 1114.) 10½d.

International copyright convention, signed at Berlin, Nov. 13, 1908. Accession of Greece. (Treaty series 1921, No. 3.) 1½d.

International Labor Conference. Draft conventions and recommendations adopted by the conference during its second meeting, June 15-July 10, 1920. (Authentic texts in English and French.) (Cmd. 1174.) 4½d.

International Labor (Seamen's) Conference, 1920. Draft conventions and recommendations. 4d.

International Sanitary Convention, signed at Paris, Jan. 17, 1912. (Treaty series 1921, No. 2.) 1s. 2½d.

League of Nations. Report by Secretary-General to First Assembly of the League on the work of the Council. (Cmd. 1022.) 4½d.

Mandates. Draft for Mesopotamia and Palestine as submitted for approval of League of Nations. (Misc. 1921, No. 3.) 3d.

———. Mandate for German possessions in Pacific Ocean, south of equator, other than Samoa and Nauru. (Misc. 1921, No. 5.) 1½d.

———. Mandate for Nauru. (Misc. 1921, No. 6.) 1½d.

———. Mandate for German Samoa. (Misc. 1921, No. 7.) 1½d.

———. Mandate for German Southwest Africa. (Misc. 1921, No. 8.) 1½d.

[1] Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W.C.2.

Merchant shipping. Return of shipping casualties and loss of life, July 1, 1914-Dec. 31, 1918. (Cmd. 1089.) 11d.

Montenegro, report on political conditions in. (Misc. 1921, No. 1.) 1½d.

———. Further report on. (Misc. 1921, No. 2.) 3d.

Patents, designs and trade marks international arrangements. Order in Council applying provisions of Sec. 91 of the Patents and Designs Act, 1907, as amended, to the Serb-Croat-Slovene State. Feb. 14, 1921 (S. R. & O. 1921, No. 267.) 1½d.

Patents of German and Austrian nationals vested in Custodian. Orders of the Board of Trade further defining the expression "Restored Application" as used in orders of July 19 and Nov. 9, 1920. (S. R. & O. 1921, Nos. 331 and 332.) 1½d. each.

Peace handbooks prepared under direction of Historical Section of Foreign Office:

Vol. XII. China, Japan, Siam. (Cloth.) 15s. 7d.

Vol. XIV. Dutch and British Possessions. (Cloth.) 13s.

Vol. XXV. Indemnities, Plebiscites, etc. (Cloth.) 10s. 11d.

Peace treaty with Austria amendment order. Feb. 14, 1921. (S. R. & O. 1921, No. 269.) 1½d.

Peace treaty with Bulgaria amendment order. Feb. 14, 1921. (S. R. & O. 1921, No. 270.) 1½d.

Peace treaty with Bulgaria. The Egypt order. Feb. 14, 1921. (S. R. & O. 1921, No. 271.) 1½d.

Peace treaty with Germany. Agreement between British and German Governments respecting Art. 297 of Treaty of Versailles, June 28, 1919 (Property, rights, and interests). London, Dec. 31, 1920. (Treaty series No. 1, 1921.) 2½d.

———. Amendment order. Feb. 14, 1921. (S. R. & O. 1921, No. 268.) 1½d.

———. Amendment order No. 2, Nov. 9, 1920. (S. R. & O. 1920.) 1½d.

Russia. Trade agreement between His Britannic Majesty's Government and the Government of the Russian Socialist Federal Soviet Republic. (Cmd. 1207.) 2d.

UNITED STATES[2]

Alien Property Custodian. Act to facilitate return of money or other property of American women married to enemy citizens. Approved Feb. 27, 1921. 1 p. (Public 332.) 5c.

———. Report to accompany bill (S. 4897). Feb. 15, 1921. 3 p. (H. rp. 1329.) *Interstate and Foreign Commerce Committee.*

[2] Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Articles of War, approved June 4, 1920. 44 p. *War Dept.*

Belgium. Message transmitting agreement signed by British and French Premiers and President of United States recommending acceptance of special German reparation bonds corresponding to sums borrowed by Belgium from their respective governments in satisfaction of Belgian obligations on account of such loans. Feb. 14, 1921. 2 p. (S. doc. 413.) *State Dept.*

Boundaries. S. J. Res. 233 giving consent of Congress to North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, and Nebraska, or any two or more of said States, to agree upon jurisdiction to be exercised by said States over boundary waters between any two or more of said States. Approved March 4, 1921. 1 p. (Pub. Res. 68.) 5c.

Cable-landing licenses. Hearings on S. 4301 to prevent unauthorized landing of submarine cables in United States. 1921. 513 p. il. map. *Interstate Commerce Committee.*

Cabrera, Manuel E. Report concerning signing and observance of articles of capitulation under terms of which President Cabrera surrendered executive office of Guatemala. Jan. 19, 1921. 6 p. (S. doc. 357.) *State Dept.*

China, famine relief in. Hearing, 1921. 12 p. *Appropriations Committee.*

———. Incorporation of companies to promote trade in. Report to accompany H. R. 16043. Feb. 9, 1921. 8 p. (H. rp. 1312.) *Judiciary Committee.*

Claims of American citizens against Germany. Report in respect to, filed with Department of State since August, 1914. March 2, 1921. 32 p. (S. doc. 419.) *State Dept.*

Colombia. Diplomatic correspondence and documents submitted to Committee on Foreign Relations to accompany treaty signed at Bogota, Apr. 6, 1914, between United States and Colombia for settlement of differences arising out of events which took place on Isthmus of Panama in November, 1903. (Confidential S. Ex. doc. 1, 65th Cong. spl. sess.) *Senate.*

Colored troops in French army and number of French colonial troops in occupied territory of Germany. Report presented by Mr. Lodge. 1921. 16 p. (S. doc. 397.) *State Dept.*

Commercial travelers' convention between Salvador and United States, signed at Washington, Jan. 28, 1919, proclaimed Jan. 22, 1921. 7 p. (Treaty series 651.) *State Dept.*

Copyright. Proclamations extending benefits of Act of March 4, 1909, and Acts amendatory thereof, to Danish and British subjects, except Dominions, for works first published between Aug. 1, 1914, and before the President's proclamation of peace, and not already republished in

United States. Denmark, Information Circular No. 59, 3 p.; Great Britain, Information Circular No. 58, 6 p. *Copyright Office.*

Czechoslovakia, economic situation in, 1920. Report by R. J. Caldwell. 48 p. *Labor Dept.*

Disarmament. Hearings on H. J. Res. 424, authorizing the President to invite all nations to send delegates to convention to provide for. Jan. 14-15, 1921. 68 p. *Foreign Affairs Committee.*

———. Report to accompany H. J. Res. 424. Feb. 2, 1921. 1 p. (H. rp. 1283.)

———. Report to accompany S. J. Res. 225, authorizing President to advise Governments of Great Britain and Japan that Government of United States is ready to take up with them question of disarmament. Jan. 18, 1921. 1 p. (S. rp. 709.) *Foreign Relations Committee.*

———. Hearings, Jan. 11, 1921. 46 p. *Military Affairs Committee.*

France. Agreement between United States and, modifying provisions of Art. 7 of convention of commerce and navigation of June 24, 1822; signed Washington, July 17, 1919; proclaimed Jan. 12, 1921. 5 p. (Treaty series 650.) *State Dept.*

Haitian Customs Receivership. Report for fiscal year Oct. 1, 1918-Sept. 30, 1919. 37 p. *State Dept.*

Harding, President Warren G. Inaugural address, March 4, 1921. (S. doc. 1, 67th Cong. spl. sess. of Senate.) *State Dept.*

Immigration. Hearing on H. R. 14471 for emergency legislation. 1921. 713 p.; report to accompany, Feb. 14, 1921, 10 p. (S. rp. 789.) *Immigration Committee.*

———. Proposed restriction of. Hearings on H. R. 12320, Apr. 22, 1920. 138 p. *Immigration and Naturalization Committee.*

Migratory birds. Proclamation further amending regulations proclaimed July 31, 1918. March 3, 1921. 2 p. No. 1588. *State Dept.*

Naturalization and citizenship. Report to accompany H. R. 15603 to amend Naturalization and Expatriation Acts. Jan. 12, 1921. 6 p. (H. rp. 1185.) *Immigration and Naturalization Committee.*

Pan American Financial Conference. Report of Secretary of Treasury on conference at Washington, Jan. 19-24, 1920. 176 p. Paper, 15c. *Treasury Dept.*

Passports. Hearings on H. R. 15857 and 15953 further regulating granting of visés by diplomatic and consular officers. Jan. 22-31, 1921. 52 p.; report submitted Feb. 1, 1921, with minority views, 10 p. (H. rp. 1280.) *Foreign Affairs Committee.*

Peru. Report covering invitation of Government of Peru to Government of United States to take official part in celebration of first centennial of independence of Peru at Lima in July, 1921. Feb. 2, 1921. 3 p. (S. doc. 370.) *State Dept.*

Relief of suffering populations of the world, stricken by war, famine,

and pestilence. Hearings on H. Con. Res. 70 and 71, Jan. 10-11, 1921. 39 p. *Foreign Affairs Committee.*

———. Report submitted Jan. 13, 1921. 1 p. (H. rp. 1186.) *For. Aff. Comm.*

Relief work of European Relief Council. Report to accompany S. Con. Res. 35, submitted Jan. 18, 1921. (S. rp. 708.) *Foreign Relations Committee.*

Russia. Hearings on H. Res. 635 requesting Secretary of State to furnish information as to conditions in. Jan. 27-Mar. 1, 1921. 254 p. *Foreign Affairs Committee.*

———. Hearings on S. J. Res. 164 for reëstablishment of trade relations with. 1921. 112 p. *Foreign Relations Committee.*

Ships. Digest of consular regulations relating to vessels and seamen. Dec. 1, 1920. 72 p. *State Dept.*

World War. Joint resolution declaring that certain acts of Congress, joint resolutions, and proclamations shall be construed as if the war had ended. Approved March 3, 1921. 2 p. (Pub. Res. 64.) 5c.

———. Report of Secretary of State relating to complaints of American citizens as to interference with American commerce by British authorities during the war. March 2, 1921. 1 p. (S. doc. 423.) *State Dept.*

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

STRATHEARN STEAMSHIP COMPANY, LIMITED, *v.* DILLON [1]

Supreme Court of the United States

March 29, 1920

Mr. Justice Day delivered the opinion of the court.

This case presents questions arising under the Seamen's Act of March 4, 1915, c. 153, 38 Stat. 1164. It appears that Dillon, the respondent, was a British subject, and shipped at Liverpool on the eighth of May, 1916, on a British vessel. The shipping articles provided for a voyage of not exceeding three years, commencing at Liverpool and ending at such port in the United Kingdom as might be required by the master, the voyage including ports of the United States. The wages which were fixed by the articles were made payable at the end of the voyage. At the time of the demand for one-half wages, and at the time of the beginning of the action, the period of the voyage had not been reached. The articles provided that no cash should be advanced abroad or liberty granted other than at the pleasure of the master. This, it is admitted, was a valid contract for the payment of wages under the laws of Great Britain. The ship arrived at the Port of Pensacola, Florida, on July 31, 1916, and while she was in that port, Dillon, still in the employ of the ship, demanded from her master one-half part of the wages theretofore earned, and payment was refused. Dillon had received nothing for about two months, and after the refusal of the master to comply with his demand for one-half wages, he filed in the District Court of the United States a libel against the ship, claiming $125.00, the amount of wages earned at the time of demand and refusal.

The District Court found against Dillon upon the ground that his demand was premature. The Circuit Court of Appeals reversed this decision, and held that Dillon was entitled to recover. 256 Fed. Rep. 631. A writ of certiorari brings before us for review the decree of the Circuit Court of Appeals.

In Sandberg *v.* McDonald,[2] 248 U. S. 185, and Neilson *v.* Rhine Shipping Co., 248 U. S. 205, we had occasion to deal with Sec. 11 of the Sea-

[1] 252 U. S.

[2] This JOURNAL, Vol. 13, p. 339.

men's Act, and held that it did not invalidate advancement of seamen's wages in foreign countries when legal where made. The instant case requires us to consider now Sec. 4 of the same act. That section amends Sec. 4530, Rev. Stats., and so far as pertinent provides:

> Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. . . . *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.

This section has to do with the recovery of wages by seamen, and by its terms gives to every seaman on a vessel of the United States the right to demand one-half the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the end of the voyage, and stipulations in the contract to the contrary are declared to be void. A failure of the master to comply with the demand releases the seaman from his contract and entitles him to recover full payment of the wages, and the section is made applicable to seamen on foreign vessels while in harbors of the United States, and the courts of the United States are open to such seamen for enforcement of the act.

This section is an amendment of Sec. 4530 of the Revised Statutes, it was intended to supplant that section, as amended by the Act of December 21, 1898, c. 28, 30 Stat. 756, which provided, "Every seaman on a vessel of the United States shall be entitled to receive from the master of the vessel to which he belongs one-half part of the wages which shall be due him at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended unless the contrary be expressly stipulated in the contract," etc.

The section, of which the statute now under consideration is an amendment, expressly excepted from the right to recover one-half of the wages those cases in which the contract otherwise provided. In the amended section all such contract provisions are expressly rendered void, and the right to recover is given the seamen notwithstanding contractual obligations to the contrary. The language applies to all seamen on vessels of the United States, and the second proviso of the section as it now reads makes it applicable to seamen on foreign vessels while in harbors of the United States. The proviso does not stop there, for it contains the express provision that the courts of the United States shall be open to seamen on foreign

vessels for its enforcement. The latter provision is of the utmost importance in determining the proper construction of this section of the Act. It manifests the purpose of Congress to give the benefit of the Act to seamen on foreign vessels, and to open the doors of the federal courts to foreign seamen. No such provision was necessary as to American seamen for they had the right independently of this statute to seek redress in the courts of the United States, and, if it were the intention of Congress to limit the provision of the Act to American seamen, this feature would have been wholly superfluous.

It is said that it is the purpose to limit the benefit of the Act to American seamen, notwithstanding this provision giving access to seamen on foreign vessels to the courts of the United States, because of the title of the Act in which its purpose is expressed "to promote the welfare of American seamen in the merchant marine of the United States." But the title is more than this, and not only declares the purposes to promote the welfare of American seamen but further to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea. But the title of an Act cannot limit the plain meaning of its text, although it may be looked to to aid in construction in cases of doubt. Cornell *v.* Coyne, 192 U. S. 418, 530, and cases cited. Apart from the text, which we think plain, it is by no means clear that if the Act were given a construction to limit its application to American seamen only, the purposes of Congress would be subserved, for such limited construction would have a tendency to prevent the employment of American seamen, and to promote the engagement of those who were not entitled to sue for one-half wages under the provisions of the law. But, taking the provisions of the Act as the same are written, we think it plain that it manifests the purpose of Congress to place American and foreign seamen on an equality of right in so far as the privileges of this section are concerned, with equal opportunity to resort to the courts of the United States for the enforcement of the Act. Before the amendment, as we have already pointed out, the right to recover one-half the wages could not be enforced in face of a contractual obligation to the contrary. Congress, for reasons which it deemed sufficient, amended the Act so as to permit the recovery upon the conditions named in the statute. In the case of Sandberg *v.* McDonald, 248 U. S. *supra*, we found no purpose manifested by Congress in Sec. 11 to interfere with wages advanced in foreign ports under contracts legal where made. That section dealt with advancements, and contained no provision such as we find in Sec. 4. Under Sec. 4 all contracts are avoided which run counter to the purposes of the statute. Whether consideration for contractual rights under engagements legally made in foreign countries would suggest a different course is not our province to inquire. It is sufficient to say that Congress has otherwise declared by the positive

terms of this enactment, and if it had authority to do so, the law is enforcible in the courts.

We come then to consider the contention that this construction renders the statute unconstitutional as being destructive of contract rights. But we think this contention must be decided adversely to the petitioner upon the authority of previous cases in this court. The matter was fully considered in Patterson *v.* Bark Eudora, 190 U. S. 169, in which the previous decisions of this court were reviewed, and the conclusion reached that the jurisdiction of this Government over foreign merchant vessels in our ports was such as to give authority to Congress to make provisions of the character now under consideration; that it was for this Government to determine upon what terms and conditions vessels of other countries might be permitted to enter our harbors, and to impose conditions upon the shipment of sailors in our own ports, and make them applicable to foreign as well as domestic vessels. Upon the authority of that case, and others cited in the opinion therein, we have no doubt as to the authority of Congress to pass a statute of this sort, applicable to foreign vessels in our ports and controlling the employment and payment of seamen as a condition of the right of such foreign vessels to enter and use the ports of the United States.

But, it is insisted, that Dillon's action was premature as he made a demand upon the master within less than five days after the vessel arrived in an American port. This contention was sustained in the District Court, but it was ruled otherwise in the Court of Appeals. Turning to the language of the Act, it enacts in substance that the demand shall not be made before the expiration of five days, nor oftener than once in five days. Subject to such limitation, such demand may be made in the port where the vessels stops to load or deliver cargo. It is true that the Act is made to apply to seamen on foreign vessels while in United States ports, but this is far from requiring that the wages shall be earned in such ports, or that the vessels shall be in such ports five days before demand for one-half the wages earned is made. It is the wages of the voyage for which provision is made, with the limitation of the right to demand one-half of the amount earned not oftener than once in five days. The section permits no demand until five days after the voyage has begun, and then provides that it may be made at every port where the vessel stops to load or deliver cargo, subject to the five-day limitation. If the vessel must be five days in port before demand can be made, it would defeat the purpose of the law as to vessels not remaining that long in port, and would run counter to the manifest purpose of Congress to prevent a seaman from being without means while in a port of the United States.

We agree with the Circuit Court of Appeals of the Fifth Circuit, whose judgment we are now reviewing, that the demand was not premature. It is true that the Circuit Court of Appeals for the Second Circuit held in

the case of *The Italier*, 257 Fed. Rep. 712, that demand, made before the vessel had been in port for five days, was premature; this was upon the theory that the law was not in force until the vessel had arrived in a port of the United States. But, the limitation upon demand has no reference to the length of stay in the domestic port. The right to recover wages is controlled by the provisions of the statute and includes wages earned from the beginning of the voyage. It is the right to demand and recover such wages with the limitation of the intervals of demand as laid down in the statute, which is given to the seaman while the ship is in a harbor of the United States.

We find no error in the decree of the Circuit Court of Appeals and the same is *Affirmed.*

THE ELVE AND THE BERNISSE[1]

Judicial Committee of the Privy Council

December 16, 1920

Sir Arthur Channell, in delivering their Lordships' judgment, said: This is an appeal by the Procurator-General from a decree of Lord Sterndale, dated July 25, 1919, in a consolidated action brought by the respondents, the owners of the S.S. *Elve* and *Bernisse*, whereby the learned President decreed on the claim in respect of the S.S. *Elve* restitution in value and gave damages in respect of the S.S. *Bernisse*, which had already been released but in a damaged condition. The steamships were owned by P. A. Van Es & Co., a Dutch firm at Rotterdam, and were chartered to a Dutch company in business at Delft for the carriage of cargoes of ground-nuts from the port of Rufisque, in the French Colony of Senegal, to Rotterdam. The Dutch companies had factories at various places in Holland, where the ground-nuts were dealt with and oil was extracted from them. This importation had commenced before the war. It was for a time stopped on the outbreak of war, but the object of it having been explained to and looked into by the French Government, it was permitted to proceed under agreed conditions and guarantees. Each consignment of ground-nuts was to be accompanied by a document called an "acquit à caution," issued by the French colonial authorities at the port of loading, and this was to be deposited on arrival in Holland with a representative of the French customs authorities at the port of discharge whose duty it was to take precautions to secure that the ground-nuts were used at the factories and that the products did not go to an enemy destination.

On May 20, 1917, the two steamships, sailing in company with cargoes of ground-nuts in bulk, were proceeding on the voyage from Rufisque to

[1] 37 Times L. R. 193.

Rotterdam by the route, then considered the safest, round the north of Scotland, and on that day they were stopped by H.M.S. *Patia*, an auxiliary cruiser, at a point situate in latitude 62 deg. 4 mins. N., and longitude 15 deg. 10 mins. W. This spot is in the North Atlantic, approximately west of the Orkneys, and is outside the zone within which the Germans had announced their intention of sinking all neutral vessels. At the time when the vessels were so stopped the Order in Council of February 16, 1917, was in force, and was being acted on by H.M. cruisers, and as it is necessary on this appeal to consider the words of that order, it is well to set out the operative part.

1. A vessel which is encountered at sea on her way to or from a port in any neutral country affording means of access to the enemy territory without calling at a port in British or Allied territory shall, until the contrary is established, be deemed to be carrying goods with an enemy destination, or of enemy origin, and shall be brought in for examination, and, if necessary, for adjudication before the Prize Court.

2. Any vessel carrying goods with an enemy destination, or of enemy origin, shall be liable to capture and condemnation in respect of the carriage of such goods; provided that, in the case of any vessel which calls at an appointed British or Allied port for the examination of her cargo, no sentence of condemnation shall be pronounced in respect only of the carriage of goods of enemy origin or destination, and no such presumption as is laid down in Article 1 shall arise.

3. Goods which are found on the examination of any vessel to be goods of enemy origin or of enemy destination shall be liable to condemnation.

4. Nothing in this order shall be deemed to affect the liability of any vessel or goods to capture or condemnation independently of this order.

It had become the practice to give to any vessel which started from a British port on a voyage to a port affording access to enemy territory or which when on such a voyage wherever commenced had, in order to comply with the Order in Council, called at a British port for the examination of her cargo, a clearance on a green card, which became known as a green clearance. When the two steamers were stopped, they were boarded by an officer from H.M.S. *Patia*, who made the usual inquiries, and was told the port from which the vessels had come, and that to which they were bound, and was shown her French documents, including the "acquit à caution." The officer asked if they had a green clearance, and was of course told that they had not. He ascertained that the cargo was in bulk, and in his evidence at the trial he gave a decided opinion that it would have been impossible to examine the ships at sea in order to find out whether there was anything hidden under the cargo. He stated, however, that if there had been a green clearance, or in other words, if the cargoes had been examined at a British port, he would have been satisfied. Being in doubt what to do, he reported the facts by signal to the captain of the *Patia*, and the captain, being also puzzled, reported them by wireless to the admiral in command of the cruiser squadron, who directed that the vessels should be sent into Kirkwall. They were accordingly ordered to

go there, and an officer and three men were put on each steamer to see that they went. The captains remonstrated on the ground that they would have to go through the danger zone, but they were told that it did not make much difference, as there were German submarines about outside the zone as well as within it, and that they sank vessels wherever they met them, so that ships were nearly as likely to be torpedoed outside the zone as in it. On this point the learned President, although he did not think it material, found that there was greater danger on the route by which the ships were directed to go than on that which they had intended to take, and their Lordships would not be inclined, and indeed have not been asked, to differ from the learned President on this point. The vessels did when within the zone encounter a German submarine, which fired on them without previous warning and sank the *Elve* by one torpedo and seriously damaged the *Bernisse* by another. Fortunately a British cruiser appeared, which took on board the crews of the vessels, who had taken to their boats, and towed the *Bernisse* in her damaged condition into Kirkwall. The *Bernisse* was temporarily repaired, and ultimately was allowed to proceed on her voyage to Rotterdam, and it is in evidence that her cargo was never examined, although in the course of the repairs it probably became evident that there was no contraband on board. On these facts the learned President has held that there was no ground in fact for detaining the vessels and sending them into Kirkwall, and, further, that there was no such reasonable ground for thinking that there was as to relieve the Crown from paying the damages arising from sending them in, and it is on the latter point that the appeal has been brought.

It is necessary first to consider the construction of the Order in Council. It has been held by this board that the order is binding on neutrals (*The Stigstad*, 35 *The Times* L. R., 176; [1919] A. C., 279; see also *The Leonora*, 35 *The Times* L. R., 719 [1919] A. C., 974), and the order expressly directs that vessels which come within the first clause *shall* be brought in for examination. The order is not very happily worded, but these vessels having started from an Allied port, do not come within the order at all unless the words "without calling at" imposed on a vessel the obligation of a subsequent call even although her cargo had been duly examined and passed at the British or the Allied port from which she started. This is an impossible construction. Having regard to the fact that the object of requiring a call is to ensure that there shall be an opportunity of examining the cargo, it seems clear that "calling at" must include "having been at" a British or Allied port when the port was the original port of departure on the voyage; and as regards the want of a green clearance that would only be given at a British port, and it really is quite clear that throughout the order an Allied port is put on the same footing as a British port. The President so held and their Lordships agree with him.

As there was in this case no ground whatever proved on which either ships or cargo could have been condemned as prize any more than any ground for detaining them under the Order in Council, the question remaining is merely that of reasonable ground for the action taken. To show such ground the Crown rely on two points. First they say that the detention was a legitimate exercise of the right of search. In this war it has been agreed that search at sea has been practically impossible and sending in to port for search has been almost universal. In this case further there was evidence that the search at sea for contraband hidden under the ground-nuts would have been impossible. The President, however, has disposed of this point by saying that even if the officers might have suspected that something contraband was hidden under the ground-nuts, in fact they did not do so and have never said that they did. They really only sent the vessels in because there was no green clearance. This seems a sufficient answer, and it is unnecessary to go further, but counsel for the respondents do further argue that even for a search reasonable ground of suspicion must be shown, and that where everything is in order on the papers, and there is no circumstance suggesting hidden contraband, even a search on the spot would be unjustifiable. In strictness this is of course correct, but so little suspicion is required to justify a search that their Lordships are not prepared to say that if a boarding officer were to state that finding a cargo to be in bulk he thought something might be hidden under it, and therefore directed a search, his conduct would be so unreasonable as to subject the Crown to a liability for damages. That case must be considered if it should arise. Here it does not appear to arise.

The second point on which the Crown rely is really the only one which gives rise to any difficulty. It is that there was a *bona fide* doubt on the part of the officers who gave the order for detention as to the true construction of the Order in Council. The question as to what is sufficient to relieve a captor from paying damages in respect of a capture which is afterwards decided to be in fact wrongful was very fully considered in the case of *The Oostzee* (9 Moore, P. C., 150). It was there held that to exempt captors from costs and damages there must be some circumstances connected with the ship or cargo affording reasonable ground for belief that the ship or cargo might prove a lawful prize. That case arose during the Crimean War, and the cases down to that date were very fully dealt with. The only case which at all supports the contention put forward by the Crown in the present case is *The Luna* (Edwards, 190). There a neutral vessel proceeding to San Sebastian, in Spain, which had at the time been for two years in the occupation of the French, was seized for alleged breach of blockade by British captors who were in *bona fide* doubt whether or not an Order in Council of April 26, 1809, declaring a blockade of "ports and places under the government of France" extended

to San Sebastian so temporarily in French occupation. Sir William Scott held that it did not so extend, and decreed simple restitution, and he not only refused the claimants costs and damages, but gave the captors their expenses. In giving judgment he said:

> It is impossible for the court to throw out of its consideration that when these Orders in Council are issued it is the duty of the officers of His Majesty's Navy to carry them into effect, and although they may be of a nature to require a great deal of attentive consideration, gentlemen of the Navy are called upon to act with promptitude and to construe them as well as they can under the circumstances of cases suddenly arising. With every wish, therefore, to make the greatest allowance for the difficulties which are at present imposed on the commerce of the world, I cannot in this instance refuse the captors their expenses, but in no future case arising on the same state of facts will the court grant that indulgence.

In *The Actæon* (2 Dodson 48), five years later, Sir William Scott, without referring to his former decision in *The Luna* (*supra*), which does not appear to have been quoted to him, laid down what seems to be a different rule. He says at p. 52:

> Neither does it make any difference whether the party inflicting the injury has acted from improper motives or otherwise. If the captor has been guilty of no wilful misconduct, but has acted from error and mistake only, the suffering party is still entitled to full compensation, provided, as I have before observed, he has not by any conduct of his own contributed to the loss. The destruction of the property by the captor may have been a meritorious act towards his own Government, but still the person to whom the property belongs must not be a sufferer.

These cases are reviewed at length in *The Oostzee* (*supra*) and it is said in the judgment that in *The Luna* (*supra*) Lord Stowell must have felt that he was going to the very verge of the law. The headnote to the report of *The Oostzee* (*supra*) in Moore's report states as part of the decision and not as a dictum that an honest mistake occasioned by an act of government will not relieve captors from liability to compensate a neutral; but it should be noted that towards the end of the judgment delivered by Lord Kingsdown he points out that in the case then before the board there was no point of law. In strictness, therefore, what was said as to the insufficiency of a mistake in point of law might be considered as *obiter*. Their Lordships, however, consider that the judgment in *The Oostzee* (*supra*) must be looked at as a whole, and that it really does decide the point stated in the headnote. It is not necessary to say that in order to relieve the captors from paying damages the neutral owner must be in some way in fault; it may be only his misfortune; but there must be something "connected with the ship or cargo" in order to give rise to the suspicion which will relieve. Here the doubt which certainly was honestly entertained was not a doubt as to anything so connected, but merely a doubt as to the meaning of an Order in Council issued by the British Government. If the decision in *The Luna* (*supra*) proceeded entirely on

the ground stated in the judgment as reported, it is contrary not only to *The Oostzee* (*supra*), but to the judgment of Lord Stowell himself in *The Actæon* (*supra*), and it cannot now be followed. It may well be that in addition to the point which is stated in the judgment in *The Luna* (*supra*) as reported, and which is, as Lord Stowell truly said, a point which ought not to be left out of consideration, there were also in the facts of that case circumstances connected with the ship which were in Lord Stowell's mind. It is clear on the face of the report that the whole judgment is not reported. Even if San Sebastian was not in strictness a blockaded port under the Order in Council, nevertheless a ship going there was obviously taking goods to the enemy, who were in actual occupation of it, and on that or some other ground, in addition to what appears in the judgment, the decision may have been justified. It has, however, been treated as a decision that the facts referred to in the judgment as matters to be taken into consideration would in themselves be sufficient, and so understood it is contrary to at least one decision binding on this board. Their Lordships will therefore humbly advise his Majesty that this appeal should be dismissed with costs.

BOOK REVIEWS*

Contemporary French Politics. By Raymond Leslie Buell. With an introduction by Carlton J. H. Hayes. New York: D. Appleton and Co. 1920. pp. xxviii, 524.

The author of this book is a studious young American, who, having served his country in arms, lingered on foreign soil long enough, and worked diligently enough, to gather a remarkable mass of information concerning the political attitudes, methods, and tendencies of the French people; and he has brought this information together in a very readable book. He deals mainly with domestic politics—party alignments, woman suffrage, proportional representation, syndicalism, the regionalist movement, the press and the censorship, and constitutional reform. Three chapters, however, are devoted to matters that may fairly be termed international. One explains what the French peace terms might have been; a second discusses the French conception of a league of nations; the third tells us what France thought of American "idealism."

Reviewing the demands of various extremer French elements—the total dismemberment of Germany, or the annexation of the left bank of the Rhine, or the creation of a cis-Rhenish republic, or the annexation of at least the valley of the Saar (coupled with the total reduction of German armament and the establishment of a permanent alliance among the existing Allies)—the author shows that such a peace would merely have followed the lines of the old diplomacy and, although having much to justify it in morals, would probably have proved as ineffectual as settlements of the old diplomacy have commonly proved hitherto. He shows how, starting from an attitude of incredulity, French opinion gradually swung to the support of the League of Nations idea as an alternative plan of settlement, only to be grievously disappointed with the character of the League as established. Only a League vastly stronger than that which actually came into being could have compensated, in the French view, for the safeguards which the old diplomacy would have secured; and "responsibility for the failure to provide the League of Nations with the security upon which France justly insisted was largely due to the American Peace Delegation." This suggests an analysis of the French attitude toward the United States during and after the peace negotiations; and Mr. Buell's final chapter is devoted to a singularly clear exposition of this

* The JOURNAL assumes no responsibility for the views expressed in signed book reviews.—ED.

important matter. Copious quotations from newspapers and speeches show in startling fashion how far the reaction went—how generally it came to be believed that "although the foremost republic in the world has its virtues, it is perhaps controlled as much by self-interest and as little by altruism as any other nation in the world;" and the volume closes with the cheerless thought, not only that America, despite all her effort, managed merely to disillusion her European friends, but also that the most that one dare hope for the world at large is that each war and each peace conference henceforth may yield "some betterment" and "some progress."

FREDERIC A. OGG.

La cuestion de Tacna y Arica. E. Castro y Oyanguren. Lima: Impr. del Estado. 1919. pp. 93.

The outcome of the World War and the announced principles upon which it was fought by the Allies have served to reinvigorate the long-standing claims of various countries based upon alleged wrongdoing of other nations. Prominent among these claims is that of Peru against Chile, arising out of the non-performance of Article 3 of the Treaty of Ancon of October 20, 1883, concluding the war of the Pacific, according to which "the provinces of Tacna and Arica . . . shall continue in the possession of Chile, subject to Chilean legislation and authority for a period of ten years. . . . At the expiration of that term, a plebiscite will decide by popular vote, whether the territory . . . is to remain definitely under the dominion and sovereignty of Chile or is to continue to constitute a part of Peru."

The plebiscite has never been held, and the provinces are still controlled by Chile. Naturally, a controversy, resting on Peruvian assertions of bad faith on the part of Chile, has been raging ever since between the two countries, manifested in a voluminous polemic literature and a wealth of diplomatic correspondence. Peru in particular has untiringly sought to bring her case to the attention of the world, and the recovery of the "lost provinces" is the central point of her foreign policy.

The pamphlet under review is one among many presenting the Peruvian argument in the controversy. It is, in essence, an epitome of the more elaborate work of Dr. Victor M. Maurtua (published in 1901), which it supplements by adducing some recent documents. It embodies the history since 1842, when Chile, with the discovery of guano north of 27°, began her penetration northwards, and emphasizes the negotiations before, during, and subsequent to the war of 1879-1883, in order to show the intent of the negotiators with respect to Article 3 of the treaty of Ancon. It concludes with an appendix containing the circular instruction of the Peruvian Minister of Foreign Affairs of February 14, 1919, which constitutes a reply to a similar Chilean instruction of December, 1918, summar-

izing the respective contentions of the parties. The author deals with the negotiations subsequent to 1894, when the plebiscite should have been held, to show the efforts of Chile to prevent its execution. He also points out Chile's uniform resistance to arbitration of the dispute, including her opposition to the principle of arbitration enunciated in a resolution at the Pan-American Congress of 1889, on which Chile abstained from voting.

The author might have mentioned Chile's arguments in support of her position, namely, that the plebiscite was a mere formality, intended to "save the faces" of the Peruvian negotiators with their own people; that an unconditional cession was intended; that Chilean "capital and workers" had made the territory productive; that the territory was ceded as "reparation" for the war losses of Chile; and that it was needed for the military security of Chile.

Impartial study and the effort to make the strongest Chilean case possible but emphasize its essential weakness and lack of substance. The above contentions of Chile are not, it is believed, sustainable from the record; and it can hardly be doubted that Chile has had little or no desire to have the plebiscite held. The reason is clear: being already in control of the territory, and having the physical force to maintain such control, she had no interest in jeopardizing her position. Recent events in Europe would indicate that reliance upon force is still the major sanction of international relations and the keynote of the foreign policy of many nations. Nevertheless, Chile has exposed herself to the continued propaganda of what is essentially a valid claim of Peru, and the dispute, unless settled, threatens the peace of the American continent and the moral standing of Chile. The pamphlet under review manifests much patriotic fervor, apparently inseparable from the polemics to which the dispute has on both sides given rise.

EDWIN M. BORCHARD.

De internationaalrechtelijke betrekkingen tusschen Nederland en Venezuela, 1816–1920. By K. H. Corporaal, LL.D., Pol.Sc.D. Leiden: Eduard Ydo. 1920. pp. 672.

President Cleveland in one of the Princeton lectures he delivered after retiring from public life has demonstrated to what extent the relations between Venezuela and European states may affect America's attitude towards both. A book therefore dealing with Venezuela's relations with another country must be of interest to Americans; especially when—as in the present instance—that other country has colonial possessions in the Caribbean.

This is a book of applied political science, in which the author considers problems diplomatic, political, legal and economic as they actually arose between two countries of our day. By far the greater part is a lucid and

exhaustive narrative, the work of a gardener in the green bushes of diplomatic history; whilst a final chapter, which savors more of laboratory dissection, gives a theoretical analysis of the legal problems with which statesmen of the Netherlands and Venezuela found themselves confronted in the course of the latter's existence as an independent international entity. Official and other documents complete the text.

The relations between the Netherlands and Venezuela are determined by the existence of a Dutch colony, the Island of Curaçao, close to the Venezuelan coast. Curaçao, with its excellent harbor, has no resources of its own, and, in an economic sense, is entirely dependent on traffic with neighboring countries. Of these, Venezuela, owing to its proximity, is the most important. The existence in that country of a high customs tariff gave rise to lively smuggling, and Curaçao naturally became the center of activity of this illicit traffic. In spite of constant and energetic endeavors on the part of the Netherland authorities, this could not be totally suppressed, and Venezuela, thus deprived of part of the income derived from her customs, had not unnaturally several times some feeling against the neighboring island.

Venezuela, on which Curaçao is economically dependent, is at the same time to a certain extent politically dependent on Curaçao. Frequent changes of a more or less revolutionary character in the government of the Republic made the Netherland colony the refuge of those who for political reasons are not tolerated in their home country. It is obvious that such a situation is likely to affect the relations between the two states. As the author remarks, this dependence, coupled with the fact that the Netherlands are here confronted with a state in which revolutions have by no means been infrequent, and where, about a century after the separation from the mother-country, lasting tranquillity did not yet appear to be quite firmly established, leaves its mark on the relations of the two countries.

Consequently the Netherland authorities have been faced with a number of problems whose solution has called into existence a peculiar system of international law between the two states. The existence of this peculiar system may be inferred from the attitude adopted by the Netherlands towards Venezuelan Governments following revolutionary movements in that country. The geopolitical situation of Curaçao and the interests of the island, forced Holland to proclaim her neutrality at an earlier moment than would be in accordance with the strict rule of international law, and to postpone the recognition of such Governments to a later date than would be legally necessary.

The revolutionary character of the Venezuelan state, which in the beginning of this century seemed not yet entirely mature and therefore not over-anxious to put an end to unstable conditions, did not encourage the Netherlands to conclude treaties. Recently, however, a treaty of amity

and commerce was made. The peculiar character of the Republic made it necessary for Holland to determine her attitude towards those typically South American conceptions known as the Drago and Calvo Doctrines, which find in Venezuela a champion, owing to the occasionally disturbed internal conditions.

The lack of treaties made it possible for Venezuela to resort to numerous and far-reaching instances of retorsion directed against the commerce of Curaçao, to which in 1908 the Netherlands retaliated.

The peculiar international relations with Venezuela led further to collective diplomatic proceedings on the part of the Powers, including the Netherlands, and to naval measures on the Dutch side, of a nature as is not usual towards other states. In case measures of a coercive nature were taken against Venezuela, the application of the Monroe Doctrine complicated the situation, and had to be taken into consideration.

On the other hand, to balance these proceedings against Venezuela, mention must be made of Netherland measures taken exclusively in the interests of the Republic: *i.e.*, the expulsion of aliens from Curaçao at the request of the government of the other country, and the suppression, on a wider scale than would be strictly necessary, of the traffic in war materials.

E. N. VAN KLEFFENS.

Vom Eingreifen Amerikas bis zum Zusammenbruch. By Karl Helfferich. Berlin: Ullstein & Co., 1919. pp. 658.

This is the third and last volume of the author's work entitled *Der Weltkrieg,* and covers the period after the decision to wage unrestricted submarine war. In view of the author's position as Minister of the Exchequer during the war, and his almost constant employment in political negotiations, it is not surprising that instead of a general presentation of world events with a due regard to proportion, we have before us rather a detailed and fairly connected narrative of German parliamentary crises and internal conditions as influenced incidentally by the external situation. Even from this limited standpoint, however, the book is instructively corroborative that "dieser Wilson" (page 360) did not err in his estimate of the autocratic power of the military caste who unmade Chancellors (page 126, von Bethmann) and named their successors (page 131, Michaelis) and decided other larger internal political questions. They met their defeat as parliamentary masters on July 19, 1917, when the Reichstag, over their protest (pages 128-130) adopted the peace resolution. To this act, and particularly to the "monstrous" conduct of Erzberger in proposing it, the author attributes the repulse of the Pope's efforts for peace in the summer of 1917 by the Allies and their will to fight on, because they now inferred that "the Central Powers were face to face

with internal collapse" (page 580). "The seed sown in July, 1917, brought its fateful crop in November, 1918" (page 153). This sentence contains the thesis of the book.

Whilst it is free of open rancor towards Germany's "pitiless foes," it is a book of a German for Germans—some Germans. It closes with a quotation from Treitschke.

GEORGE C. BUTTE.

Etudes sur l'Occupation Allemande en Belgique. By Albert Henry. Brussels: J. Lebègue & Co. pp. 464.

L'Œuvre du Comité National de Secours et d'Alimentation pendant la Guerre. By Albert Henry. Brussels: J. Lebègue & Co. pp. 361.

Referring to the books above described, Cardinal Mercier, who writes a preface for the second volume, informs us that the author was Secretary-General of the *Comité National de secours et d'alimentation* during the recent war and wrote the first-named volume as a witness and the second as an informed agent, courageous and tenacious in the service of an undertaking which saved the lives of the Belgian people and powerfully contributed to sustain its morale.

The first volume, relating to the German occupation in Belgium, opens with a spirited review of the conduct of the Germans and certain Flemish associates sympathetic with them in furthering the cause of Germany. This is followed by a history of the deportation of Belgian workmen to Germany, including a narrative of the protestations and interventions of neutral Powers with relation thereto. The condition of Belgian agriculture during the war is discussed, and the work closes with a history of the National Committee.

The second volume above referred to covers the work of the National Committee, and includes a glance at the historical situation of Belgium before the formation of the committee, then describing the difficulties of the committee's problem; its Belgian organizers; the assistance of neutrals; the struggles with the enemy, and the work of American Commission for Relief. The problems connected with the importation and distribution of supplies and the work of manufacturing under the supervision of the National Committee are dealt with at large. The details of the granting of relief to those in various positions, as, for instance, out-of-work families of those in the army, children, those discharged from the hospitals, etc., receive detailed attention. The general policy of the committee is also discussed at large.

With our point of view, we appreciate the tribute paid to the American Commission for its labors and the frank recognition of the value of the

work of Mr. Hoover and Mr. Brand Whitlock. The personal picture given of Mr. Hoover is not without its interest. The writer says:

> Mr. Hoover possesses in a high degree the theatrical art, and he loves to look beyond the end sought so as to be sure of reaching it. Each time that he arrived in Belgium during the occupation, the Germans feared bombs of which, according to Monsieur Francqui, he always had his pockets full. How many times these bombs constrained them to yield upon points to which they had theretofore offered an irreducible resistance! Notwithstanding the coldness of his demeanor, which accentuates his truly American phlegm, Mr. Hoover, according to those who know him intimately, has a heart of gold.

Cardinal Mercier speaks of Brand Whitlock as a man of exquisite sensibility, personified uprightness, and an intelligence open to the most elevated problems of the moral conscience, displaying toward Belgium a profound sympathy and a constant desire to render aid.

The volumes, which may be considered complementary to each other, offer interesting and valuable views of the Belgian situation during the war.

JACKSON H. RALSTON.

Collected Legal Papers. By Oliver Wendell Holmes. New York: Harcourt, Brace & Howe. 1920.

The collection has been made by Mr. Harold J. Laski, to whom Mr. Justice Holmes, in a brief but characteristic preface, expresses "thanks for gathering these little fragments of my fleece that I have left upon the hedges of life."

There are twenty-eight papers and addresses, starting with one on "Early English Equity" which appeared in the *Law Quarterly Review* of London in 1885, and ending with one on "Natural Law," which was printed in the *Harvard Law Review* in 1918. The papers are brief, they average about eleven pages each. They are written with autocratic assurance, as becomes the brilliant son of "The Autocrat." They have, as might be expected, quite as much a literary as a legal turn, and by no means avoid paradox. There is a light touch, unusual and exotic erudition and somewhat of philosophy. None of the topics strictly belong to international law, and it is not a branch with which Mr. Justice Holmes has been especially identified, as he has been with comparative law.

Perhaps the two papers which are most interesting to the international lawyer, simply because of their topics, are those on Montesquieu (1900) and John Marshall (1901). The former appeared as an introduction to a reprint of the *Esprit des Lois* in 1900. In Montesquieu, Justice Holmes finds a congenial spirit, for, as he says, "Montesquieu was a man of the world and a man of Esprit," and he places him "in the canonical succession of the high priests of thought." He quotes with full appreciation Montes-

quieu's saying that the society of women spoils our morals and forms our taste, and again that "he never had a sorrow which an hour's reading would not dispel." Montesquieu was an international wit, scholar and critic, as his *Lettres Persanes* evidence no less than his *Esprit des Lois*. He was internationally accepted, and he noticed with pleasure that the sale of wine from his vineyards was increased in England by the publication of his great work. Justice Holmes says of him:

> He was a precursor of political economy. He was the precursor of Burke when Burke seems a hundred years ahead of his time. The Frenchmen tell us that he was a precursor of Rousseau. He was an authority for the writers of the *Federalist*. He influenced and, to a great extent, started scientific theory in its study of societies, and he hardly less influenced practice in legislation, from Russia to the United States. His book had a dazzling success at the moment, and since then probably has done as much to remodel the world as any product of the eighteenth century, which burned so many forests and sowed so many fields . . . and this was the work of a lonely scholar sitting in a library.

This is high praise when we remember that the French Revolution, the Revolution of the Thirteen Colonies, the Constitution of the United States, Rousseau, Voltaire, Goethe, Burke, Pitt, Fox, Adam Smith, Washington, Franklin, Jefferson and Marshall, all were products of the eighteenth century. However, considerable kindly latitude is allowed to a preface and to a grave-stone.

It is for us to remember that the *Esprit des Lois* is a work often cited by the great writers on international law, at least in the past. Thus our own classic in international law, Wheaton, writes "Montesquieu, in his *Esprit des Lois*, says that every nation has a law of nations—even the Iroquois, who eat their prisoners, have one. They send and receive ambassadors; they know the laws of war and peace; the evil is, that their law of nations is not founded upon true principles,"—which may be admitted, even if we are progressing toward the same principles.

Sir Robert Phillimore quotes him in his compendious *Commentaries on International Law* no less than thirteen times, Calvo twice, Taylor twice, etc. As precedents and authorities have increased, writers on international law quote Homer and Theocritus, Virgil and Horace less often than in former generations and they likewise pass over the *Esprit des Lois*.

Montesquieu found general causes, moral or physical, for the grandeur and decadence of nations, and was among the earlier observers and recorders of such causes. Every one has been his follower, and later writers have had much more exact and abundant facts but none have excelled in wit.

The paper on John Marshall is simply Mr. Justice Holmes's remarks from the bench on February 4, 1901. That was the hundredth anniversary of the day on which Marshall took his seat as Chief Justice. It was kept by concerted action as "John Marshall Day" all over the country, a fine

lesson in respect for great minds and patriotic service. The five pages which Mr. Justice Holmes prints are his observations in answer to a motion that the court adjourn.

He expressed a wish, which is often apparent in his utterances, "to see things and people judged by more cosmopolitan standards," saying very finely "A man is bound to be parochial in his practice—to give his life, and if necessary his death, for the place where he has his roots. But his thinking should be cosmopolitan and detached. He should be able to criticise what he reveres and loves." He doubts whether "Marshall's work proved more than a strong intellect, a good style, personal ascendency in his court, courage, justice and the convictions of his party."

Perhaps, if Mr. Beveridge's vivifying life of the great Chief Justice with its four volumes of splendid vindication, had then been published and had made plain the long unfaltering labors and achievement of Marshall and the vast effect of those labors on the development of our government, the estimate might have been more wholly generous, and the words of diminution might have been stricken out; but before he closed and declared "the court will now adjourn," Justice Holmes spoke some words of great breadth of view, justice and significance. He said:

> The setting aside of this day in honor of a great judge may stand to a Virginian for the glory of his glorious State; to a patriot for the fact that time has been on Marshall's side, and that the theory for which Hamilton argued, and he decided, and Webster spoke, and Grant fought, and Lincoln died, is now our cornerstone. To the more abstract but farther reaching contemplation of the lawyer, it stands for the rise of a new body of jurisprudence, by which guiding principles are raised above the reach of statute and state, and judges are entrusted with a solemn and hitherto unheard-of authority and duty.

The little volume of collected legal papers could have come from no American jurist except Justice Holmes. They will do quite as much with the bar to maintain his intellectual reputation as his official opinions, and they will do far more with the public.

CHARLES NOBLE GREGORY.

A New Principle of International Law. By A. M. M. Montijn, LL.D. The Hague: Belinfante Brothers. 1919. pp. 56.

This pamphlet, devoted to the cause of lasting peace, is an appeal to a new arbiter and servant of man, science, and to a new science, Anthropo-Geography. The author reviews the various projects and programs, from the time of ancient Greece down through Roosevelt to the very present moment, for the prevention of war, only to find them all futile "so long as the states persist in the principle of their unlimited sovereignty . . . there can be no question of even the slightest possible organization amongst them."

The deepest cause of war is found in the varying density of population in European states, which fixed political boundaries emphasize more and more. The "New Principle" is a redistribution of territory periodically, about every fifty years, so as to increase the territory of the more densely populated states. The smaller states, like Belgium, need not be considered, since they are not likely to fight to extend their boundaries, nor Britain, as an island state. Eastward expansion is inevitable, France into Alsace and Lorraine, Germany into Russian Poland, Italy into Serbia, and Serbia into Greece. Existing inhabitants in each case would have to be moved out to make room for the newcomers. But this would be no worse than the results of the existing method of altering frontiers by war. And strategic frontiers have lost their real importance since the advent of the airplane. Besides, such migration would be a small matter, "seeing that by this means the calamities of war are avoided."

This little work furnishes another example of the constant agonizing revolt of the spirit of man against the world-anarchy which is war. That its "new principle" is almost fantastically impracticable does not seem to the author conclusive, nor does he seem to realize that the machinery to carry out his plan would necessitate the very world organization of which he despairs.

FRANK H. WOOD.

The Three Stages in the Evolution of the Law of Nations. By C. Van Vollenhoven. The Hague: Martinus Nijhoff. 1919. pp. 102.

The striking feature of this interesting booklet is its assertion that Vattel demoralized international law by grafting into it the idea of sovereignty. "Vattel may possibly have been a good man in the opinion of his relations and domestic servants; but he gave a Judas-kiss to Grotius's system," says our author; "he sides with Richelieu and calls his unbridled, arbitrary dealings 'sovereignty.' In Vattel we find the cheap finery of a theoretical equality of all states; for are not all equally sovereign?" "Grotius is the apostle of the rights of nations, perhaps the prophet of an ultimate League of Nations. Vattel is the absolute negation" of both. "The unbridled liberty to wage war for the sake of paramount power was not exposed and not renounced." In short, Grotius's distinction between just and unjust wars was abandoned, and all wars were alike good, *i.e.*, legal.

The author is skeptical about "this perfectly voluntary arbitration to which a sovereign state can never be forced to submit, but to which a prince's conscience delights to lead him—provided, of course, that the interests of his country will allow him." Vattel's "monstrous conception of "sovereignty" destroyed the work of The Hague Peace Conferences, and denied that states could commit crimes. Recent examples of such crimes

are cited, and the law that tolerated them is termed "this misshapen conglomeration of hypocrisy and cynicism."

The "third period," since 1914, is marked by a return to the spirit of Grotius. War is either a crime, or else the punishment of a "crime of the country that sets it ablaze." Our author would abolish the term and the thing, "neutral," a word Grotius never uses, though it was used in his day. Offensive and defensive alliances are also anathema in this new day, because they compel nations "to sustain their ally even when he commits the worst crime a state can commit, viz., the crime of assailing other nations."

High tribute is paid to the work of Bryan in his arbitration treaties. "Bryan's formula of 1913 is a treasure trove."

The style is vigorous, burning as it does with the glowing hatred of war which marked the year 1918, when it was written. The few typographical errors do not in any case conceal the meaning.

FRANK H. WOOD.

PERIODICAL LITERATURE OF INTERNATIONAL LAW

[See Table of References, p. 451.]

Aaland Islands. Sweden and the Aland award. *Cur. Hist.*, June, 1921. *14:* 543.

American-Japanese Relations. American-Japanese issues and the Anglo-Japanese Alliance. T. Okamoto. *Contemp. R.*, Mar., 1921. *663:* 354.

———. The Japanese Problem in California. C. R. Hicks. *J. Int. Rel.*, Apr., 1921. *2:* 606.

Anglo-American Relations. La politica exterior Americana. J. H. Latané. *Revista del Mundo*, May, 1921. *9:* 57.

———. The Future of Sea Power: Naval and Mercantile. A. Hurd. *Fortn. R.*, Apr., 1921. *109* (n. s.): 62.

———. No war with England.

Our World Trade Rivalry. *Nation*, Apr. 27, 1921. *112:* 610.

Merchant Marine Problems. *Nation*, May 4, 1921. *112:* 644.

The Menace of Naval Competition. *Nation*, May 11, 1921. *112:* 677.

Oil. *Nation*, May 18, 1921. *112:* 706.

The Bearing of International Finance. *Nation*, May 25, 1921. *112:* 731.

Cables and Canals. *Nation*, June 1, 1921. *112:* 782.

Anglo-Russian Relations. L'Accord Commercial Anglo-Russe. L. Weiss. *L'Europe Nouvelle*, Apr. 2, 1921. *4:* 430.

———. The Victory at London. K. D. *Soviet Russia*, Apr. 16, 1921. *4:* 369.

Armaments and Disarmaments. L'aeronautique Française. Gén. H. Salle. *R. Pol. et Parl.*, Feb., 1921. *106:* 195.

———. The Army [British] in war and peace. F. G. Stone. *19th Cent.*, Mar., 1921. *529:* 494.

———. The arrest of armaments. G. H. Perris. *R. of R. London*, Feb.-Mar., 1921. *64:* 105.

———. The greatest navy in the world [British]. F. T. Piggott. *19th Cent.*, Mar., 1921. *529:* 511.

———. Limitation of armament. F. I. Cobb, L. C. Andrews, T. Iyenaga, E. M. Borchard, H. A. Gibbons. *B. of League of Free Nations Ass.*, Mar., 1921. *2:* 1.

———. Naval policy and the British Empire. J. M. Kenworthy. *Foreign Affairs*, May, 1921. *2:* 169.

———. Pressing need for disarmament. *World's Work* (London), Mar., 1921. *37:* 301.

———. Revue des questions navales et maritimes [France]. R. La Bruyère. *R. Pol. et Parl.*, Feb., 1921. *106:* 323.

Armenia and Turkey. H. Buxton. *Foreign Affairs*, May, 1921. *2:* 174.

Australia for the White Man. C. F. Murray. *19th Cent.*, Mar., 1921. *529:* 417.

———. White Australia. *Round Table*, Mar., 1921. *42:* 312, 406.

Austria. The agony of. M. H. H. Macartney. *Fort. R.*, Apr., 1921. *109* (n. s.): 603.

———. L'Offre de Paix séparée de l'autriche et les négociations du Prince Sixte. J. de Witte. *Etudes*, Apr. 5, 1921. *167:* 29.

Aviation Law. Problems in. G. G. Bogert. *Cornell L. Q.*, Mar., 1921, *6:* 271.

Bagdad Railway. The. A. D. C. Russell. *Q. R.*, Apr., 1921. *467:* 307.

Balkans, The, and Emancipated Central Europe. *Cur. Hist.*, June, 1921. *14:* 516.

Balkans, The. The hope of order in the Balkan chaos. H. F. Armstrong. *Weekly R.*, May 28, 1921. *4:* 509.

———. The truth about the. H. C. Woods. *Q. R.*, Apr., 1921. *467:* 391.

Baltic Sea Republics. Democracy and union in the Baltic States. *Cur. Hist.*, June, 1921. *14:* 513.

———. Latvia, Lithuania, Esthonia. *Cur. Hist.*, May, 1921. *14:* 267.

———. The French colony in the Baltic Sea. A. D. *Soviet Russia*, Mar. 19, 1921. *4:* 280.

Belgium. The international situation of. E. Cammaerts. *Contemp. R.*, May, 1921. *119:* 625.

Bolshevism and Socialism. M. W. F. Treub. *New World*, Mar., 1921. *4:* 331.

———. Catching up with "The Soviet Idea." B. Baker. *Weekly R.*, Apr. 30, 1921. *4:* 413.

———. Lenin's address to the Communist Party. *Soviet Russia*, May 7, 1921. *4:* 458.

———. Speedy end of the Armenian and Georgian Republics. *Cur. Hist.*, May, 1921. *14:* 264.

———. Stemming the Red Tide. T. T. C. Gregory. *World's Work*, Apr., 1921. *61:* 608; May, 1921. *42:* 95.

———. What Russia thinks of the Bolsheviki. Sir P. Dukes. *World's Work*, May, 1921. *42:* 100.

British Empire. Imperial unity and the Peace Treaty. F. W. Eggleston. *Q. R.*, Apr., 1921. *467:* 286.

———. The problem of Empire defence. G. Aston. *Fort. R.*, Apr., 1921. *109:* 635.

———. South Africa and the Empire. *Round Table*, Mar., 1921. *42:* 338, 428.

British Mandates. The new department for "Backward Peoples." S. Oliver. *Headway*, Feb., 1921. *1:* 19.

British West Indian Federation. *Cur. Hist.*, Apr., 1921. *14:* 147.

———. The problem of Crown Colony Government in the Caribbean. S. Hoare. *19th Cent.*, Apr., 1921. *530:* 606.

Canada. Appeals to the Privy Council. A. C. Galt. *Can. L. Times*, Mar., 1921. *41:* 168.

———. The new Canadian tariff. W. L. Edmonds. *Cur. Hist.*, May, 1921. *14:* 289.

Canada-France. La nouvelle convention commerciale entre la France et le Canada. A. Touche. *France-Amérique*, Mar., 1921. *111:* 60.

Caribbean Sea. La preponderancia de los Estados Unidos en el Mar Caribe. R. de Cárdenas. *Cuba Contemporánea*, Mar., 1921. *25:* 221.

Central American Union. Pact of the. *Cur. Hist.*, Apr., 1921. *14:* 153.

———. And the United States. B. Gray. *Cur. Hist.*, May, 1921. *14:* 294.

China and the world's peace. W. Koo. *Headway*, Apr., 1921. *1:* 48.

———. Extraterritoriality. H. G. W. Woodhead. *J. Amer. Bar Ass.*, Apr., 1921. *7:* 176.

———. Military power and Constitutional development in. H. M. Vinacke. *Amer. Pol. Sc. R.*, May, 1921. *15:* 233.

———. Readings from ancient Chinese codes and other sources of Chinese law and legal ideas. J. Wu. *Mich. L. R.*, Mar., 1921. *19:* 502.

———. Some pressing problems in. Hua-Chuen Mie. *J. Amer. Bar Ass.*, Apr., 1921. *7:* 179.

———. Suicidal factors at work in. E. S. Ling. *J. Amer. Bar Ass.*, Apr., 1921. *7:* 177.

Chinese Banking Consortium. Canton and the consortium. J. W. Kingsnorth. *Millard's R.*, Mar. 19, 1921. *16:* 123.

———. The consortium in China. J. Dewey. *New Republic*, Apr. 13, 1921. *26:* 178.

Conferences. L'Ere des Conférences. R. Lévy. *L'Europe Nouvelle*, Apr. 2, 1921. *4:* 438.

Colombia-United States. Colombian treaty—Retrospect and prospect. I. J. Cox. *J. of Int. Rel.*, Apr., 1921. *2:* 549.

———. The Colombian treaty ratified. *Cur. Hist.*, June, 1921. *14:* 541.

Costa Rica. [Amory oil concession and inter-oceanic canal.] *Cur. Hist.*, May, 1921. *14:* 335.

Costa Rica-Panama Boundary. Costa Rica invades Panama. *Cur. Hist.*, Apr., 1921. *14:* 148.

———. Panama rejects the White award. *Cur. Hist.*, May, 1921. *14:* 334.

Czechoslovakia. Vetoes the Hapsburgs. *Cur. Hist.*, Apr., 1921. *14:* 167.

Diplomacy. British foreign policy in Europe. C. Battinè. *Fort. R.*, Apr., 1921. *109* (n. s.): 581.

———. By conference. Sir M. Hankey. *Round Table*, Mar., 1921. *42:* 287.

———. The development of modern. II. J. B. Scott. *Adv. of Peace*, Apr., 1921. *83:* 96.

Egypt. Is Egypt a nation? *Nation*, Apr. 6, 1921. *112:* 516; Apr. 13, 1921. *112:* 540; Apr. 20, 1921. *112:* 599.

———. The needs of. Prince I. Hilmy. *Cur. Hist.*, May, 1921. *14:* 269.

———. The report of the Milner Commission on. M. McIlwraith. *Fortn. R.*, Apr., 1921. *109* (n. s.): 561.

———. The protectorate and the Milner report. T. Barclay. *Fortn. R.*, Apr., 1921. *109* (n. s.): 567.

France. Clemenceau and Gambetta. A study in political philosophy. J. W. Pratt. *So. Atl. Q.*, Apr., 1921. *20:* 95.

———. France's colonial empire. A. Tardieu. *World's Work* (London), Apr., 1921. *37:* 439.

———. The economic and financial position of France in 1920. G. Jèze. *Int. J. Econ.*, Feb., 1921. *35:* 175.

———. The foreign policy of France. A. Tardieu. *World's Work* (London), Mar., 1921. *37:* 314.

———. France's position and politics. S. Huddleston. *Contemp. R.*, Mar., 1921. *663:* 289.

———. The Supreme Court of France. J. F. C. Waldo. *J. Amer. Bar. Ass.*, Apr., 1921. 7: 171.

France-Germany. De la nécessité d'un rapprochement Franco-Allemand. H. Fernau. *La Paix par le Droit*, Feb., 1921. *31:* 54.

France-Russia. La protection des interéts prives français en Russe. L. Martin. *R. Pol. et Parl.*, Feb., 1921. *106:* 212.

———. Russians held in France. B. Souvarine. *Soviet Russia*, May 28, 1921. *4:* 521

Georgia. Exit. P. Hibben. *Nation*, Mar. 30, 1921. *112:* 475.

Germany. Crushes Communist revolt. *Cur. Hist.*, May, 1921. *14:* 210.

———. Germany's political changes. *Cur. Hist.*, June, 1921. *14:* 384.

———. The present situation in Germany. P. Rohrbach. *Weekly R.*, Apr. 6, 1921. *4:* 313.

———. Those black troops on the Rhine—and the white. L. S. Gannett. *Nation*, May 25, 1921. *112:* 732.

———. What the world should know about Germany. M. Harden. *World's Work* (London), Feb., Mar., 1921. *37:* 320.

German Indemnity. The breakdown of the London Conference. Politicus. *Fortn. R.*, Apr., 1921. *109* (n. s.): 549.

———. La Conférence de Londres. Th. Ruyssen. *La Paix par le Droit*, Mar.-Apr., 1921. *31:* 122.

———. The London Conference. L. Bashford. *19th Cent.*, Apr., 1921. *530:* 594.

International Organization. The international service of the Pan-American Union. L. S. Rowe. *Adv. of Peace,* Apr., 1921. *83:* 145.

———. Prophylaxis in the peace movement. J. H. Ralston. *Adv. of Peace,* Apr., 1921. *83:* 138.

———. The psychological surgery of war. R. H. Bevan. *Adv. of Peace,* Mar., 1921. *83:* 104.

———. Three facts in American foreign policy. A. D. Call. *Adv. of Peace,* Apr., 1921. *83:* 140.

Ireland and the Home Rule Act. Round Table, Mar., 1921. *42:* 231.

———. And the realm. R. Evans. *19th Cent.,* Apr., 1921. *530:* 574.

———. And the world's peace. Northcliffe. *19th Cent.,* Apr., 1921. *530:* 566.

———. A plea for conciliation. H. Spender. *Contemp. R.,* Mar., 1921. *663:* 290.

———. Today. H. Plunkett. *Nation,* May 25, 1921. *112:* 738.

Italy. Italy's election of world importance. *Cur. Hist.,* June, 1921. *14:* 402.

———. The solvency of. *Anglo-Italian R.,* Mar., 1921. *1:* 97.

Japan. El Japón en China. P. G. Castrillo. *España y America,* Mar. 1, 1921. *19:* 342.

———. The Far Eastern deadlock. J. Dewey. *New Republic,* Mar. 16, 1921. *26:* 71.

———. Japan's policy of expansion. L. O. Battle. *Cur. Hist.,* June, 1921. *14:* 459.

———. Moral factors in Japanese policy. J. O. Bland. *Asia,* Mar., 1921. *21:* 211.

Karelià. The new Karelian Soviet Republic. H. Langseth. *Soviet Russia,* Apr. 23, 1921. *4:* 400.

Korea. Japan's record in. H. J. M. Merrick. *Asiatic R.,* Apr., 1921. *17:* 215.

League of Nations. Admission of new members to. R. Cecil. *Headway,* Feb., 1921. *1:* 17.

———. Democracy and the. G. N. Barnes. *R. of R.* (London), Feb.-Mar., 1921. *64:* 99.

———. A Farca de Genebra. M. de Oliveira Lima. *Rev. de Der. Historia y Letras,* Mar., 1921. *68:* 318.

———. France and the. R. Viviani. *Headway,* Mar., 1921. *1:* 33.

———. Improving the world's transit facilities. [Barcelona Conference.] *Cur. Hist.,* June, 1921. *14:* 470.

———. India and the. A. Yusuf Ali. *Contemp. R.,* May, 1921. *119:* 633.

———. The international labour organization. J. H. Clynes. *Headway,* Feb., 1921. *1:* 19.

———. Is the League practicable? (1) Peace by common sense. B. Fuller. (2) A league with limitations. J. D. Rees. *19th Cent.,* Apr., 1921. *530:* 700.

———. Must the League have an army? C. P. Fendall. *R. of R.* (London), Feb-Mar., 1921. *64:* 112.

———. La première Assemblée de la Société des Nations. J. Prudhommeaux. *La Paix par le Droit,* Feb., 1921. *31:* 46.

———. The relations between the Council and the Assembly. J. Brodie. *Headway,* Jan., 1921. *1:* 4.

———. The "Technical Organizations" of the. *Headway,* Apr., 1921. *1:* 50.

League of Red Cross Societies. Activité internationale de la Croix-Rouge en temps de paix. *R. Int. de la Croix-Rouge,* Feb., 1921. *26:* 89.

———. L'Organisation de la Croix-Rouge internationale et du Comité international. J. de Zawadzki. *R. Int. de la Croix-Rouge,* Mar., 1921. *27:* 201.

———. Résolutions et vœux de la Xme Conférence internationale de la Croix-Rouge. *R. Int. de la Croix-Rouge,* Apr., 1921. *28:* 330.

Little Entente. And the Hapsburgs. *Cur. Hist.,* May, 1921. *14:* 219.

Russia. The republics of ancient Russia. W. B. Steveni. *New World*, Mar., 1921. *4:* 343.

———. Soviet Russia's return to capitalism. *Cur. Hist.*, June, 1921. *14:* 521.

———. The single economic plan. L. Trotsky. *Soviet Russia*, Mar. 5, 12, 1921. *4:* 225, 262.

———. Successes of Soviet Russia. *Cur. Hist.*, May, 1921. *14:* 253.

———. Three years of proletarian law. D. Kursky. *Soviet Russia*, Apr. 23, 1921. *4:* 398.

———. Wireless telegraphy in Soviet Russia. A. M. Lyubovitch. *Soviet Russia*, May 14, 1921. *4:* 472.

Santo Domingo's bitter protest. H. G. Knowles. *Cur. Hist.*, June, 1921. *14:* 397.

———. The evacuation of. F. Fiallo. *Cur. Hist.*, May, 1921. *14:* 291.

———. Protest of Santo Domingo's deposed president. F. Henriquez y Carvajal. *Cur. Hist.*, June, 1921. *14:* 399.

Self-determination. R. Lansing. *Sat. Even. Post*, Apr. 9, 1921.

Sèvres Treaty. Bulgaria and the Turkish Treaty. *Cur. Hist.*, May, 1921. *14:* 352.

———. Faut-il reviser le traité de Sèvres? L. Abensour. *La Grande Revue*, Feb., 1921. *183:* 644.

———. Greece attempts to impose the. *Cur. Hist.*, May, 1921. *14:* 347.

———. La question d'Orient et le droit des peuples. A. Jouet. *La Paix par le Droit*, Feb., 1921. *31:* 58.

———. The revision of the Turkish treaty: I. Armenia. Viscount Bryce. II. Smyrna. J. J. Stavridi. III. Thrace. N. Buxton. *Contemp. R.*, May, 1921. *119:* 577.

———. Secret pacts of France and Italy with Turkey. G. R. Montgomery. *Cur. Hist.*, May, 1921. *14:* 203.

Siam. Americans to give up exterritorial rights in? J. B. P. *Millard's R.*, Mar. 5, 1921. *16:* 6.

Siberia and the Japanese. F. A. Ogg. *Cur. Hist.*, June, 1921. *14:* 464.

———. Birth of a republic in. *Cur. Hist.*, May, 1921. *14:* 246.

———. Japanese aggression in. S. C. Graves. *Cur. Hist.*, May, 1921. *14:* 239.

———. Siberia's new republic: its standing. F. B. Kirby. *Cur. Hist.*, June, 1921. *14:* 476.

Silesian Plebiscite. Après le plebiscite de Haute Silesie. X. *L'Europe Nouvelle*, Apr. 2, 1921. *4:* 434; P. Millet, *L'Europe Nouvelle*, Mar. 19, 26, 1921, *4:* 363, 395.

———. Le plébiscite Silésien. Th. Ruyssen. *La Paix par le Droit*, Mar.-Apr., 1921. *31:* 126.

———. Le dilemme de la Haute-Silésie. M. Toussant. *Nouvelle Revue*, Mar. 15, 1921. *52:* 97.

———. The Silesian crisis and Korfanty. *Cur. Hist.*, June, 1921. *14:* 389.

———. Upper Silesia in its economic relations to Poland and Germany. G. Kramsztyk. *New World*, Mar., 1921. *4:* 351.

———. Upper Silesian question, The. (I) S. Osborne. (II) J. H. Harley. *Contemp. R.*, Apr., 1921. *664:* 478.

Smuts, General. The man and his policy. C. Dawbarn. *R. of R.* (London), Mar.-Apr., 1921. *375:* 200.

Sovereignty. The technique of the pluralistic state. W. Coker. *Amer. Pol. Sc. R.*, May, 1921. *15:* 186.

Spain. La vida internacional de España durante la guerra. R. Gay de Montellá. *Nuestro Tiempo*, Mar., 1921. *267:* 298.

The Syrian Question. S. P. Duggan. *J. of Int. Rel.*, Apr., 1921. *2:* 571.

Trieste, Salonica and Smyrna. H. C. Wood. *Fortn. R.*, May, 1921. *653:* 815.

United States. America's foreign-born millions. *Cur. Hist.*, June, 1921. *14:* 446.

United States. Treating incoming aliens as human beings. F. A. Wallis. *Cur. Hist.*, June, 1921. *14:* 434.

———. Après l'arrivée au pouvoir de M. Harding. Le petrole et les cables. P. Scott Mowrer. *L'Europe Nouvelle*, Mar. 26, 1921. *4:* 397.

———. Cable communications with South America. *Weekly R.*, May 14, 1921. *4:* 455.

———. Licenses for cable landings. *Weekly R.*, Mar. 30, 1921. *4:* 289.

———. Mr. Lansing at Versailles. O. Brett. *Headway*, May, 1921. *1:* 65.

———. Porto Ricans as citizens. A. Shaw. *A. R. of R.*, May, 1921. *63:* 483.

———. Presidential government. H. P. Chandler. *J. of Amer. Bar Assoc.*, Apr., 1921. *7:* 149.

———. American foreign policy. J. H. Latané. (II) Relations with continental Europe. *World's Work*, Apr., 1921. *61:* 619. (III) Our relations with China and Japan. *World's Work*, May, 1921. *62:* 36.

———. President Harding and his foreign policy. H. W. Horwill. *19th Cent.*, Mar., 1921. *529:* 428.

———. Foreign policy of the. *Cur. Hist.*, May, 1921. *14:* 189.

———. The States and foreign relations. J. M. Matthews. *Mich. L. R.*, May, 1921. *19:* 690.

———. A State's sovereign powers. F. P. Stockbridge. *Cur. Hist.*, June, 1921. *14:* 435.

———. Woodrow Wilson's place in history. Gen. J. C. Smuts. *Cur. Hist.*, Apr., 1921. *14:* 45.

Versailles Treaty. Un Allemand qui justifie le traité de Versailles. S. de Callias et J. Ch. de Valville. *La Grande Revue*, Feb., 1921. *183:* 641.

War. Commerce, concessions and. D. Y. Thomas. *So. Atl. Q.*, Apr., 1921. *20:* 105.

War-making Alliances. Japan, Russia, Germany. G. Brandes. *Forum*, Apr., 1921. *65:* 393.

War Risk. The theory of war risk in French, British and American law. J. W. Stinson. *Amer. L. R.*, Mar.-Apr., 1921. *55:* 218.

World War. Cost of the. *Cur. Hist.*, Apr., 1921. *14:* 54.

———. Did the Kaiser want the war? H. Delbrück. *Contemp. R.*, Mar., 1921. *663:* 322.

———. A reply to Prof. Delbrück. J. W. Headlam-Morley. *Contemp. R.*, Mar., 1921. *663:* 333.

———. L'aide suédoise aux prisonniers de guerre. D. Maillart. *R. Int. de la Croix-Rouge*, Feb., 1921. *26:* 129.

———. L'Allemagne et la question des responsabilités. R. Daniel. *L'Europe Nouvelle*, Mar. 19, 1921. *4:* 366.

———. Un jugement autrichien sur les responsabilités de la guerre. H. Hauser. *L'Europe Nouvelle*, Apr. 2, 1921. *4:* 440.

War Debts. American policy and European debts. P. W. Wilson. *Weekly R.*, Mar. 30, 1921. *4:* 293.

———. Pourquoi les Etats-Unis devraient annuler la dette de guerre des Allies. F. J. Wade. *R. Pol. et Parl.*, Feb., 1921. *106:* 165.

———. The Inter-allied indebtedness. P. Fuller, Jr. *Forum*, Apr., 1921. *65:* 411.

Yap. The controversy over Yap Island. *Cur. Hist.*, Apr., 1921. *14:* 108.

HOPE K. THOMPSON.